

[Mr. V. Subba Aiyar.]

THE NAYAR REGULATION AMENDMENT BILL.

Clause 9.

PRESIDENT: The discussion of the Nayar Regulation Amendment Bill will now be continued. We are at Clause 9. The first amendment to be taken up is the one standing against the name of Mr. Madhava Variar.

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanam-titta*): I do not move my amendment.

The following amendments were not moved:—

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanam-titta*): Line 1. Add after the words "A subsequent marriage of" the words "a male or."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Line 2. Add the word "valid" after the word "prior."

Add the word "of the same female" after the word "marriage."

MR. A. GOVINDA MENON (*Alangad cum Parur*): Add the following at the end of the Clause:

"The marriage of a Nayar male or female during the continuance of a prior marriage and performed after the coming into force of this Regulation shall be void; and no one having a personal law of his own allowing polygamy shall marry a Nayar female, while he has already a Nayar wife or caste wife, or marry a caste female while he has a Nayar wife."

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Remember Clause 9 as Clause 9 (a) and add as Clause 9 (b) the following:—

"A subsequent marriage of a male during the continuance of a prior marriage is void."

MR. C. SANKARA MENON (*Quilon*): Add the following at the end of Chapter II:

"(a) The marriage of a Nayar male during the continuance of a prior marriage and performed after the coming into force of this Amendment Regulation shall be void.

(b) No one having a personal law of his own allowing polygamy shall, after the passing of this Regulation, marry a Nayar female while already married to a caste wife or marry a caste wife while having a Nayar wife already."

MR. N. KUMARAN (*Nominated*): Add the following as Clause 10:—

"(a) The marriage of a Nayar male during the continuance of a prior marriage and performed after the coming into force of this Amendment Regulation shall be void.

(b) No one having a personal law of his own allowing polygamy shall marry a Nayar female while already married to a Nayar female or caste wife."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): With your permission, Sir, I beg to move an amendment to make the matter more clear. The clause as amended will read as follows:—

"The subsequent marriage of a female or male during the continuance of a prior marriage is void."

I take it that what is meant is a subsequent marriage of a Nayar male or a Nayar female. It is better to make it clear.

Mr. G. PARAMESVARAN, PILLAI (*Neyyattinkara*): Mr. Hoogewerf yesterday said in answer to Mr. Raja Raja Varma Koil Tampuran's question that he meant both.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Nayar and non-Nayar?

Mr. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes.

Mr. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): "The subsequent marriage" could only mean the subsequent marriage of a Nayar female, and we might put in "Nayar" male instead of having the matter in doubt. I therefore move that the word "Nayar" be inserted before the word "male."

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I second it.

Mr. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I rise to a point of order? When once an amendment has been accepted by the House, whatever be the form in which it should have been passed, I wish to know whether it is open to the House to move a further amendment to that amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is only the insertion of the word "Nayar."

Mr. P. K. NARAYANA PILLAI (*Ambalapuzha*): Be it an insertion of a word or be it otherwise, the amendment has been accepted by the House. In that view, is it open to the House to move another amendment to the amendment which has been already accepted? It may be that the effect of inserting the word may be to enlarge the meaning or whittle down the meaning of an amendment. There was an opportunity yesterday which has not been availed of. I myself spoke against the amendment in its various aspects.

PRESIDENT: The amendment proposed by Mr. Subba Aiyar is not a direct negation of the amendment which has been accepted by the House. I think, therefore, it is admissible and in order.

Mr. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I oppose the amendment. The object of the amendment seems to be to exclude non-Nayar husbands from the operation of Section 9. There were several amendments tabled on the agenda to the effect that even in the case of non-Nayars having caste wives, they shall not marry a Nayar wife during the life-time of their caste wife. These amendments have been withdrawn.

PRESIDENT: Not moved.

Mr. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes, not moved, for the reason that the amendment passed yesterday was

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sufficiently comprehensive; and in answer to a question put by Mr. Raja Raja Varma Koil Tampuran, Mr. Hoogewerf, the mover of the amendment, said expressly that his idea was to include both Nayar and non-Nayar males within the scope of the amendment.

PRESIDENT: It may be his intention, but he should have made it quite clear.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): He said that he did not exclude non-Nayars at all. The marriage of a male with a female, contemplated under the Nayar Regulation, can be only between a Nayar female and a Nayar male or another male who by recognised social custom and usage can marry and does marry a Nayar female; so that the Section, as it is, is sufficiently clear. The other amendments expressly excluding non-Nayar husbands were not moved for the reason that Section 9, as it stood, was sufficiently comprehensive. The object of that amendment is now sought to be defeated by the motion of Mr. Subba Aiyar requesting the Council to insert the word "Nayar" in Section 9 before the word "male." Now, Sir, my ground for opposing this motion on the merits is simply this. Much has been said during the general discussion of this Bill about intestate succession in respect of the self-acquired or separate property of non-Nayar husbands; much was said about the infringement of the personal law sought to be affected by this Amendment Bill. To me it appears that, if we do not accept this amendment and if we exclude hereafter all polygamous marriages, be it of a Nayar husband or of a non-Nayar husband, such complications will not arise at all in the future. It is only in the case of existing marriages that we will have to make some provision or other in regard to intestate succession. In regard to future marriages, there will not be such polygamous marriages at all. There will not be a Nayar wife and a caste wife to create complications in regard to intestate succession. So that, that matter will be easily settled hereafter and the provision in Section 9 will not have any operation except in regard to future marriages. In regard to existing marriages, the question does not arise at all. In regard to all future marriages it is desirable that, in view of the complications set out in this very House by Mr. Subba Aiyar and Mr. Krishna Aiyangar, the provision now incorporated in the Bill whereby there will be only one wife—the caste wife or the Nayar wife—should be accepted, and the motion of Mr. Subba Aiyar which goes directly against the very essence of the Section should be negatived.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Wakil*): May I ask whether a non-Nair having a Nayar wife is not allowed to have a second wife from his own caste now?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): "Now" means under the existing Regulation?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Wakil*): Yes.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Under the existing Regulation, he can have; but not after the amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If so, may I ask whether the junior members of Potti and Nambudiri families, who marry Nayar wives according to custom, will not be driven to divorce them?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Is it possible for them to divorce the existing Nayar wives when divorce is restricted? They cannot divorce and they cannot marry in their caste although all along they have been doing so.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): My only point is this. He is married already to one wife. If he is not satisfied with her he can divorce her. We do not want that person to marry another female after he is already married to one.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am glad to accord my support to the amendment which I consider absolutely necessary for the protection of the interests of the Nayar community and other communities who have got marital relationship with Nayars. Monogamy is a good ideal; But makkathayam is neither profitable nor possible, without strengthening the marriage tie, and monogamy is one of the ways of strengthening it. But so long as you say that Nayar females may be given in marriage to non-Nayars, so long as you are not prepared to give a frontal attack to the custom and declare that such marriages should be prohibited, I am not able to subscribe to the view now taken by my friend Mr. G. Paramesvaran Pillai. I want to remove certain misapprehensions which may be entertained by some of my friends regarding my attitude on the question of these mixed marriages. I am referring to my dissenting note on the Select Committee's Report. Among other things I said:—

"The Yogakshema Sabha and the Kshatriya Samajam have repeatedly passed resolutions on the subject. The East Coast Brahmins have ceased to respect the idea of taking wives from the Melayali community. Caste continues and will continue to be the dividing line between husband and wife except in rare cases. The child born of mixed marriages cannot obtain an introduction to polite society except through the father when the tarwad goes out of existence. When the father, the head of the household, is a non-Nayar who eats his food *in camera* and performs his spiritual obligations in a place uncontaminated by the eyes of his children, the latter fail to get any experience of material or spiritual affairs, the adherence to which can alone keep society together. Even militant rationalists are not able to rise above the feelings and sentiments which have solidified by the grinding work of centuries. To a Hindu the performance of the obsequies and the conduct of *sraddhas* are as much a right as well as a duty. The Nayar son of a Brahmin is not permitted to give a drop of water to his dying father or touch his body at the time of cremation. He has no right to offer the funeral cake. I think it will be to the advantage of all concerned if these anomalous marriages are once for all prohibited. When the non-Nayar communities concerned are themselves for discontinuing the practice, prudence and self-respect require that the Nayars should at once move for its prohibition."

I maintain that view, and if there is anybody to bring forward a proposal to discontinue those marriages, I would be for that. But having accepted the principle that the existing custom should go on, so long as we maintain those principles, the amendment proposed by Mr. Subba Aiyar is absolutely necessary. Life is not always materialistic and spiritual ideas have not lost all their force in society.

[President.]

I think that a Hindu, living and moving in the traditions of his religion and believing in the way of his fathers with regard to things after death, has a right and a duty to perpetuate that family custom. In the case of a Malabar Brahmin who has taken a Nayar wife, who has been living with her comfortably, begetting children, and looking after those children, if such a man reasonably apprehends that his family would come to extinction in case he does not marry from his own caste, I think the enlightened opinion of the Nayar community ought to accept the position and never create difficulties in the way of such people who have had amicable relationship with the Nayar community for hundreds of years.

MR. A. GOVINDA MENON (*Alangad cum Pârur*): May I know if the meaning of the amendment now put forward is the same as that he now expresses?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): There is the amendment and there are my words. Mr. Govinda Menon can put them together. If my view is wrong, so grossly and totally wrong, Mr. Govinda Menon can speak on the subject and convince the House.

Sir, in order to prevent unnecessary estrangement and to avert the frustration of spiritualistic ideas on the part of those communities, the amendment is necessary. I may also say that there are some Nayar families in different parts of Travancore, particularly in North Travancore, where women are given in marriage only to certain high-caste non-Nayars. It may be good or it may be bad. But what you have to do is to respect the sentiments that govern the community. Social reform may be good, but I do not think we shall be justified in compelling social reform by penalties of this nature. While recognising the principle that these mixed marriages are very often the cause of various difficulties, seeing that even the non-Nayar communities concerned are themselves for discontinuing these marriages, and in the light of the fact that these marriages are likely to become smaller and smaller in number, I do not think that it is wise to create any unnecessary bitterness or any unprofitable estrangement. The amendment, to my mind, is a very reasonable one and I for one am entirely in favour of it.

MR. A. HOOGEWERF (*Nominated*): I strongly oppose the amendment. I really did not know what Mr. Subba Aiyar had to say. But I really cannot understand how this amendment has sneaked into this House just now. My amendment was for the introduction of "male" and I never said a Nayar male. To clear the doubt my friend Mr. Raja Raja Varma Koil Tampuran particularly asked me if I included non-Nayars also and I clearly told him that I included both Nayar and non-Nayar. On the face of this I cannot understand —

PRESIDENT: You did not word your amendment, Mr. Hoogewerf, clearly.

MR. A. HOOGEWERF (*Nominated*): But I made it clear.

PRESIDENT: That will not do. You should have worded your amendment clearly.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I ask Mr. Hoogewerf whether a non-Nayar is to be deprived of his religious performances being carried out by caste heirs? That is to say, does his objection extend to the remarriage of a Nayar female, or to a non-Nayar marrying in his own caste as well, in order that he may beget an issue to perform his funeral obsequies? Does my friend say that this Council should take away the privileges of a man's funeral ceremonies being performed by members of his caste merely because some time before the passing of this Regulation he married a Nayar female? Has he any objection to a non-Nayar marrying in his own caste even after the passing of this Regulation?

MR. A. HOOGEWERF (*Nominated*): I do not quite understand the question.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am sorry; I shall explain. A non-Nayar has married a Nayar female before the passing of this Regulation. It is open to him subsequently to marry a caste-wife. After the passing of this Regulation he finds it absolutely necessary to marry a caste-wife for perpetuating his lineage and for the performance of his funeral rites. Does my friend propose to deprive that non-Nayar of the right of having his funeral obsequies performed by his caste-heirs? How is he to do it if he is not allowed to remarry in his own caste, which is absolutely necessary? He may object to a non-Nayar marrying a Nayar female during the continuance of a caste wife. But has he any objection to the non-Nayar marrying a caste wife just for his spiritual requirements? That will be an interference with the religion of an individual. May I further tell him, while he took the analogy of Cochin divorce, that the divorce there is not absolutely free? We have made it absolutely impossible. Under the circumstances, I ask him whether in common fairness to a man's spiritual requirements he should not allow the non-Nayar to marry a caste wife? I believe I have made myself quite clear.

MR. A. HOOGEWERF (*Nominated*): I do not quite understand. I have got a slight headache; probably it is due to that. (*Laughter.*)

I spoke on monogamy and it was there that I referred to the law in the Nayar Regulation of Cochin. With regard to the other question, I do not quite understand what Mr. Krishna Aiyangar said. But, all the same, I have clearly made everybody here understand, especially after the question asked by Mr. Raja Raja Varma Koil Tampuran and the reply given to him by me, that both Nayar and non-Nayar males were meant.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I ask Mr. Hoogewerf if any expression used by him in his speech forms part of the amendment which he proposed? (*Laughter.*)

[Mr. T. K. Velu Pillai.]

PRESIDENT: Shall I ask Mr. Velu Pillai to put his question again?

MR. A. HOOGEWERF (*Nominated*): It is not necessary because it is understood.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I ask Mr. Hoogewerf whether he is aware that the obsequies of a non-Nayar can be performed only by his caste relations?

MR. A. HOOGEWERF (*Nominated*): It may be so.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Is he aware of that?

MR. A. HOOGEWERF (*Nominated*): I am not quite aware. Probably, it must be so.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Then are we not to provide facilities for it?

MR. A. HOOGEWERF (*Nominated*): He should not go to a Nayar female at all. (*Laughter.*)

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): After this Regulation he should not.

MR. A. HOOGEWERF (*Nominated*): Never mind after or before. That is what I say. (*Laughter.*)

So, if a Nayar cannot have two wives, I cannot see why a Brahmin who has a solid wife (*laughter*), properly married, spiritually with all ceremony,—I have seen this solid union which has impressed me a great deal, much more than the Catholic ceremony—should be allowed to put asunder that wife. On the face of that I cannot understand why a Brahmin should go into another community and marry another wife. It looks like concubinage and not as marriage.

MR. T. LAKSHMANA PILLAI (*Nominated*): May I know whether Mr. Hoogewerf is aware of the fact that a non-Nayar is at liberty to marry another wife in his own caste?

MR. A. HOOGEWERF (*Nominated*): Let him marry if he wishes from his own community. (*Laughter.*) It is simply outrageous. The other is bad enough; this is simply outrageous. A Brahmin who has married with such holy rites is not likely to marry a Nayar wife to whom he has only to give the clothing and so on. We are trying to make the tie stronger. When we are making every effort to make the tie stronger, I cannot tolerate for a second a Brahmin interloping (*laughter*) into this community and having a second wife. That seems to me, Sir, like concubinage.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Will Mr. Hoogewerf tolerate it in any other community?

MR. A. HOOGEWERF (*Nominated*): I belong as I said to the Nayar community just now. (*Laughter.*) That is why I am moving the amendment on behalf of the Nayar community. I do not want to say much more than this on the subject; but I emphatically protest against such an intrusion--I do not know what to call it--with regard to this conjugal tie. Mr. Subba Aiyar has brought forward this amendment and I think it is simply scandalous and this House should never tolerate it.

* PRESIDENT: You should never use such expressions.

MR. A. HOOGEWERF (*Nominated*): Sir, I beg to withdraw that. Anyhow, I felt very strongly in the matter and this is my excuse for saying so much.

MR. T. LAKSHMANA PILLAI (*Nominated*): Sir, the amendment moved by Mr. Hoogewerf seems to cast a reflection on the non-Nayars and also about their customs, because to take a second wife from outside is not sinful, as among non-Nayars there is the custom already and there is no forced monogamy. There is the custom of marrying two or three wives, if necessary. That is not for any sensual purposes. Sometimes in cases where the first wife does not bear any children a non-nayar marries a second wife, and if the second wife does not bear any children, he marries a third wife. There is nothing in it as going against religious principles or religious integrity.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether the same arguments would not apply to Nayars also?

MR. T. LAKSHMANA PILLAI (*Nominated*): It does not make any difference so far as their religious attitude is concerned. That is what I meant. The non-Nayar not only performs his caste marriage according to the rules of his caste but also performs a marriage with a Nayar female according to her caste rites, and so it does not in the least militate against his religious principles to marry again in his own caste or in any other caste.

From the religious point of view I may say that a Non-Nayar is sometimes compelled to marry another wife in his own caste. That is because he believes that he cannot get heaven or, at least, he believes sometimes that he cannot get away from hell unless he gets a son. The very meaning of the word son (*putran*) is one that saves the parent from falling into hell. I do not mean to say whether it is true or not. But there it is that he has got that conviction.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): May I know from Mr. Lakshmana Pillai whether, in spite of the second, third or even fourth marriage, if a man does not get a son, what will be his fate?

MR. T. LAKSHMANA PILLAI (*Nominated*): He would look upon himself as very unfortunate indeed. It will be a very unfortunate matter and he is not to blame for it. The Hindu Law permits him to do that, and there is no idea of a scandal or any such thing attached to it. It is a perfectly legitimate course that he can adopt. Now, what difference does it make, I say, if the non-Nayar, instead of marrying again

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in his own caste, marries from the Nayar caste? It is only a difference of caste, but the Nayar is still a Hindu and his ideals are all Hindu ideals. So that, I do not see why Mr. Hoogewerf should go so far—

MR. A. HOOGEWERF (*Nominated*): Why should he not marry in his own caste?

MR. T. LAKSHMANA PILLAI (*Nominated*): Why should an Englishman marry a Frenchwoman or a Frenchman marry an Englishwoman? It is not prohibited by any law. Well, the only shame or disgrace that may attach to the custom is only when the Englishman treats the Frenchwoman not as a wife. Then comes the obloquy and not otherwise.

MR. A. HOOGEWERF (*Nominated*): Does Mr. Lakshmana Pillai know that the way of marriage of the French and the English is the same, that the French and the English belong to the same religion, and the marriage tie is the very same, their inheritance and everything else is the very same? Is the inheritance of the Brahmin the same as that of the Nayar?

MR. T. LAKSHMANA PILLAI (*Nominated*): When I come to the question of inheritance, I am going to insist upon the very same provisions as in the case of a non-Nayar. But that is no reason for Mr. Hoogewerf saying that a non-Nayar should only marry in his own caste.

MR. A. HOOGEWERF (*Nominated*): Would it not be high time to do all these things after the legislation for inheritance?

MR. T. LAKSHMANA PILLAI (*Nominated*): I mean to say that the Englishman is not bound hand and foot against marrying from another community. So, in the same way a non-Nayar need not be prevented from marrying a Nayar female and according to the Hindu customs, if, for purposes of begetting children, he requires to marry another time. I say that there need not be any provision of the legislation to prevent it. Otherwise—

MR. A. HOOGEWERF (*Nominated*): May I know whether, when a Brahmin marries a Nayar female, he goes through the same process that I mentioned, as he does when marrying a Brahmin wife?

MR. T. LAKSHMANA PILLAI (*Nominated*): I am not considering about exceptions. I am speaking of the ordinary custom. It is not necessarily from sensual motives that a non-Nayar marries from the Nayar community. It would be very generally out of sheer necessity, and in that case, I do not see why a non-Nayar should make a difference as regards his own community and the Nayar community.

MR. A. HOOGEWERF (*Nominated*): May I know whether the son or daughter of a Brahmin by his marriage with a Nayar wife is called Brahmin or Nayar?

MR. T. LAKSHMANA PILLAI (*Nominated*): Any other name would as well suit. There is nothing about nomenclature at all.

Under the head of inheritance, we have to make a change, and we must make a change when we come to that.

PRESIDENT: You may reserve your remarks for that occasion.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, yesterday I said all that I had to say against the enforcing of monogamy on the Nayar community. Anyhow, this House accepted it. Now, Mr. Subba Aiyar has been permitted to move this amendment. I bow to your ruling, Sir, and I do not question it. Nevertheless, it appears to me that the amendment, as it stands, includes both Nayars and non-Nayars. In that spirit I believe the House accepted it, because in Clause 1, sub-clause (2), of the Regulation we have the following:—

“It shall apply to all Nayars domiciled in Travancore, and to such Nayars not so domiciled and non-Nayars whether so domiciled or not, as have, or shall have, marital relation with Nayar females domiciled in Travancore.”

This Regulation applies equally to Nayars and non-Nayars having marital relations in Travancore. So when Mr. Hoogewerf mentioned ‘male’ he referred to Nayar males as well as non-Nayar males who have marital relations with the community.

PRESIDENT: That was not the point on which my ruling turned.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I do not wish you to correct the ruling. Therefore, whether it is clear or not, this House accepted the amendment of Mr. Hoogewerf yesterday with open eyes. It was expressly asked and stated in answer to the question of Mr. Raja Raja Varma Koil Tampuran that he meant both Nayars and non-Nayars who have got marital relations with Nayars and we have accepted that amendment by a majority in this House. So, it is not proper now, it appears to me, to go back upon it. That is the first ground.

Of course, I recognise that this law will cause some hardship and disability to certain communities. It is not only a disability to the non-Nayars but it is a disability also to the Nayars—and of course both communities must be prepared to make the necessary sacrifices. If the non-Nayars think that this will press too heavily upon them, of course it is open to them to make some change in their practice, whereby more than one member in the community might marry in their own castes so that there may be greater chances for perpetuating the family; and I think it will be good to the community because it will tend to its increase. So, probably, this practice if enforced will be to the lasting benefit of the non-Nayar communities. For these reasons I object to this amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I only wanted to make the point clear. I may say at the outset that my object is not to make any distinction or differentiation between a Nayar and a non-Nayar. I do not want to allow a non-Nayar the luxury of any number of Nayar wives. What I wanted was only to provide for

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a custom which exists and from which there is no escape. In other words, in the case of the Malabar Brahmins the junior member is always allowed--at any rate, is required, we may say--to marry a Nayar wife, and sometimes when the Karanavan or the senior member dies without issue he has to marry in his own caste, and when he entered into the alliance with a Nayar female he thought he would be allowed to marry in his own caste if an occasion arose. So that, it is only to provide for such contingencies that I wanted to put in the word "Nayar" there. If my amendment is not sufficiently explicit, I have no objection to withdraw it and make it plainer. In other words, I say a person who is to marry in his own caste has married before this Regulation a Nayar wife and he would be allowed to marry a caste wife now. But if we pass this Regulation he must necessarily divorce her and he cannot get a divorce unless he proves specific grounds. Therefore he cannot get a divorce. He wants to marry a caste wife and therefore he will be in the horns of a dilemma. I do not want even that a non-Nayar who marries a Nayar wife hereafter should be allowed to marry in his own caste. But how to provide for a contingency which has already arisen on the distinct understanding that he will be allowed to marry in his own caste? You do not allow him to divorce as in Cochin, freely; you do not allow him to marry again and therefore you are really by a law creating hardship to a community which never anticipated it and which never bargained for it.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): May I know what was the practice before this had come into force?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If the members of this House are really for a Malabar Brahmin who has married a Nayar wife and who has got children by that wife to divorce that wife, then probably he may not be in a position to remarry at all. I have not the slightest objection to allow that provision to be left as it is, but I say it will be causing hardship.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether a similar provision does not exist in the Cochin Regulation and whether he knows of such hardship especially in —

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The divorce there is free. Every one of the persons will then want to have a divorce before the commencement of the Regulation. I do not think this House is so unreasonable as to require every man to divorce his existing wife in order that he may be quite prepared to act according to the new law. I do not think that it will be a logical or safe or sound proposition.

Let us take the history of this Bill. Mr. Raman Pillai, when he introduced the Bill, wanted to restrict Nayars from having more Nayar wives than one. In other words, he did not want to affect the

rights of non-Nayars with reference to their marrying in their own castes. That is to say, the Bill never contemplated that. The Select Committee, I believe, were for allowing polygamy as it is, and therefore they were not for the enforcement of monogamy. Now an amendment was passed yesterday, and in order that it may not lead to hardship both among Nayar women and non-Nayar husbands I thought that the addition of the word "Nayar" would be enough. But I find there seems to be a misconception that, if that word crept in, a non-Nayar would have the privilege or liberty of having any number of wives. That is not my idea. I have not the slightest objection to restrict it, except in the case of a non-Nayar marriage existing before the passing of this Regulation. I believe it is only in fairness.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I request Mr. Subba Aiyar to have his amendment in a clear form as he proposed it? My friend's argument seems to be a very piteous one with reference to persons who have got into a tight corner. (*Laughter.*) If, therefore, his idea is only to extricate such of them, we should like to see the scope of that amendment clearly.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Then I will withdraw that amendment and put in another amendment more clearly.

PRESIDENT: Have you got it?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is better to put it in as a proviso.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What is the existing amendment first?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have put in the word "Nayar" in order that it may read "Nayar male or female." My object is this. Notwithstanding anything contained in sub-section (1) the marriage of a non-Nayar with a caste wife shall not be void during the continuance of a marriage with a Nayar wife before the commencement of the Regulation. It is only that that I want.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Suppose a non-Brahmin non-Nayar who is allowed to marry in the Nayar community marries from his own caste.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I believe the same principle will apply. Everybody will take care that if he goes in for a Nayar wife hereafter, he would not have the right or liberty, I may say the luxury, also of marrying in his own caste.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Mr. Krishna Aiyangar put it on religious grounds. It applies only to Brahmins and not to non-Brahmins who also marry Nayar women. It does not mean to extend to those other people.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): So long as they do not marry from their own caste.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): They are trying to establish a different practice now.

PRESIDENT: Your amendment involves an immediate change. You want that the community should change its social system immediately.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes; if a non-Nayar marries a Nayar wife he is bound to have only one wife. But in the case of those who have already married Nayar women when they were allowed to marry in any caste, they should not be prevented, as Mr. P. K. Narayana Pillai put it, from escaping from a tight corner, because no divorce will be granted.

PRESIDENT: If your amendment takes this altered shape it means that the junior members of a Malayala Brahmin family should give up at once marrying Nayar ladies.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes. My amendment runs as follows:

"Notwithstanding anything contained in sub-section (1) the marriage of a non-Nayar male in his own caste shall not be void though he has married a Nayar wife before the commencement of this Regulation."

I suppose I have made it clear. I want to safeguard only such marriages as have already come into existence and as will be undesirable in the interests of all parties to dissolve. You force him to dissolve the existing marriage, because there is another aspect of it. He becomes liable to prosecution under the Penal Code by the doctrine of *factum valet*. So far as the caste wife is concerned the marriage is perfectly valid; but if he goes in for a caste wife he commits an offence. So I say all these difficulties are arising when you are trying to interfere with the customs and usages of other communities. It was only to safeguard the interests of the communities that are put to difficulties that I brought in the amendment.

Mr. Subba Aiyar was permitted to move the amendment in the altered form.

PRESIDENT: Mr. Subba Aiyar wants that a proviso should be added to Clause 9 as amended, the main Clause being numbered as sub-section 1. Then, it cannot be a proviso. It will be thus:—

"Add as Clause (2)" notwithstanding anything contained in sub-section (1) the marriage of a non-Nayar male in his own caste shall not be void though he has married a Nayar wife before the commencement of this Regulation."

PRESIDENT: Does the House accept the amendment?

The amendment was accepted by the House.

PRESIDENT: The question is that Clause 9 as amended do form part of the Bill.

The Clause, as amended, was added to the Bill.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Idavagai*): There is no list or registered document for the existing or future marriages. Would it not be very difficult to differentiate between future and existing marriages?

PRESIDENT: We cannot go back upon that Clause. We are now at Clause 10. Clause 9 has been put and accepted by the House.

Clause 10.

The following amendment was not moved:—

MR. M. N. PILLAI (*Trivandrum*):

In line 1 insert the words "and major unmarried daughters" between the words "minor children" and "shall".

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to move the following amendment:—

Insert the following in line 1 after the word "children":

"Except married daughters under the guardianship of their husbands."

When the amendment is introduced the Clause will run as follows:—

"The wife and minor children, except married daughters under the guardianship of their husbands, shall be entitled to be maintained by the husband or father as the case may be."

Sir, there is one aspect of the question which I propose to bring to the notice of the learned mover of the Bill, *i. e.*, whether there is not an overlapping of the provision so far as the liability of the husband and the father is concerned. "The wife and minor children shall be entitled to be maintained by the husband or the father, as the case may be" is the present provision. It may be that some of the minor children of the father happen to be married. I should like to know whether it is in the contemplation of the mover to see that even married minor daughters should be maintained by their father. That is not clear. Anyhow, my own view is that, if a minor daughter is married and is living under the guardianship of her husband, there is very little justification for the father being called upon to maintain such a daughter also.

PRESIDENT: If the husband is also a minor?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is also a point that I wish to bring to the notice of the learned mover. If he has thought over the question he may adopt the amendment. If not, I would press it to a division.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, there is one difficulty in accepting the amendment. Even if a minor girl may be married, I do not think it right to divest the father of the duty of maintaining the minor daughter. Sometimes the minor wife may not be

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maintained by the husband, or the father might have married his daughter to a person who is not able to maintain her. Under such circumstances it is not proper that the father whose primary duty is to maintain his minor children should be divested of that duty. I had thought over the matter, and my view is that it must be the duty of the father to maintain his minor children whether they are married or not. In spite of the fact that the father has got a duty to maintain his minor children, we have not thought it right to take away the right of maintenance of minor children from the tarwad. There may be two independent bodies who have the duty of maintaining minor children. In such a case, there is no reason why one body should be divested of that duty.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I may say a word in view of what Mr. Paramesvaran Pillai has said on this amendment. Sections 10 and 11, as they stand, are not, I think, clearly worded. According to them the father is not under an obligation to maintain his minor daughters after marriage. The Sections of a statute must be read together and interpreted in such way as not to cause any inconsistency. If that principle of interpretation is accepted, then it means, the minor children, if they are not married, must be maintained by the father; and if the minor daughter happens to be married, it is the duty of the husband to maintain her. According to Section 10 there is an obligation on the part of the husband to maintain the wife whether minor or major. I take it that Sections 10 and 11 when read together impose an obligation to maintain her on the father while his daughter is unmarried and on the husband when she is married. If Mr. Paramesvaran Pillai wants that the father should not be divested of the duty of maintaining his minor daughter whether she is married or not, then, I think, he will do well to make it clear by suitable amendments. As it is, I think the father has the duty to maintain his minor daughter only so long as she is unmarried.

PRESIDENT: Do you accept Mr. Narayana Pillai's amendment? Mr. Subba Aiyar points out that Clause 11 is inconsistent with Clause 10 of the Bill.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I mean, the two must be read together. Then there is no necessity for the amendment. But if what Mr. Paramesvaran Pillai wants is to be made clear, he must bring in a fresh amendment. Section 10 says that the wife and minor children shall be maintained by the father or the husband, as the case may be, which means that the wife shall be maintained by the husband and the children by the father. Section 11 says that so far as guardianship is concerned the husband shall be the legal guardian of the minor wife. In both the cases, the husband should be the guardian and he should maintain his minor wife.

PRESIDENT: I do not know if that follows.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It follows.

PRESIDENT: I am not a lawyer.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, as I apprehended, the meaning that I thought would be attached to the Clause in question has evidently been put on it by the learned mover. But if Mr. Subba Aiyar says that it ought not to be the meaning by canons of interpretation—I also occasionally use these canons of interpretation—there is not certainly the necessary expression to hit the mark. Hence I think it must be made clear that the provision in this respect does not lend itself to conflicting constructions. I myself feel that it is better that we define exactly the scope of the liability of the father and amend the provision so as to be applicable only in the case of minor sons and unmarried minor daughters. Therefore I think my amendment may be accepted.

The amendment was put to the vote and carried.

The following amendments were not moved:—

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanam-titta*): Line 1. Delete the word "and" and add the words "and unmarried major daughters" after the words "minor children."

MR. M. N. PILLAI (*Trivandrum*): Line 3. Insert the words "or major unmarried daughters" between the words "wife" and "shall not."

MR. M. N. PILLAI (*Trivandrum*): Line 4. Insert the words "or father as the case may be" between the words "husband" and "without just cause."

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanam-titta*): Sir, I beg to move that in Line 4, Clause 10, the words "lives in adultery" be added after the words "just cause."

I think these words exist in the present Nayar Regulation and they were deleted in this Bill without any proper reason in the report of the Select Committee. No reason is alleged why these words were omitted. Moreover, as we have passed Section 8 in which it is stated that a woman who lives in adultery is not entitled to compensation when she is divorced, I think that these words may also be added to this Section.

MR. N. KUMARAN (*Nominated*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I rise to oppose the amendment. These words are in the old Regulation. It was deliberately omitted by the Select Committee in order to avoid an enquiry into the conduct of the woman when she seeks for maintenance from her husband. If we allow this plea of living in adultery to be put in by the husband when a wife brings a suit for maintenance, we may take it that in almost every case the defence will be that the wife lives in adultery. It is only when the feeling between the husband and the wife is estranged that a suit for maintenance will be brought by the wife against the husband. Then for the mere purpose of insulting the wife he may put in this defence which will lead to the washing of dirty linen in public. It was therefore

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that this expression was deleted from the original Bill itself by the Select Committee. According to the amended Bill it is open to a husband to bring a suit for dissolution of marriage on the ground of adultery. Until he files a petition for divorce and succeeds, he must be bound to maintain the wife irrespective of any reasons. The duty to maintain the wife must subsist until he gets a dissolution, and if he has got proper grounds for the same, it will be open to him to put in a petition and get the marriage dissolved. Except in case of dissolution I am opposed to any enquiry being held into the conduct of a woman especially when she puts in a petition for maintenance. It is upon these grounds that the words were deleted and I oppose the amendment proposed by Mr. Madhava Variar.

MR. M. R. MADHAVA VARIAR (*Ohengannur cum Pattanam-titta*): Mr. Paramesvaran Pillai opposes my amendment on the ground that the words in question were deleted with the intention of avoiding an open enquiry into the conduct of the husband and the wife. But these words exist in the present Regulation and Mr. Paramesvaran Pillai has not quoted any instance in which an open enquiry was made into the conduct of a woman and dirty linen washed in public. As these words exist in the existing Regulation and as Mr. Paramesvaran Pillai has not shown that any mischief is caused by the existence of this provision, I do not think that any harm will result by the addition of the words "lives in adultery." Moreover, if a woman lives in habitual adultery, it is not just to ask the man to maintain her. Hence I press my amendment.

The amendment was put to the vote and lost.

PRESIDENT: I think in an earlier Clause we adopted the phraseology 'or has changed her religion.' I think it was in Clause 8. So, it would be better for the sake of uniformity to adopt the same wording here also.

The amendment was accepted by the House.

The following amendment was not moved.

MR. C. SANKARA MENON (*Quilon*): Add at the end of the proviso the words "or has become an out-caste."

The question that Clause 10 as amended do form part of the Bill was then put to the vote and carried.

Clause 10, as amended, was added to the Bill.

Clause 11:

The following amendment was not moved:—

MR. C. SANKARA MENON (*Quilon*): Sub-clause (1). Delete and substitute the following:—

"The father shall be the legal guardian of his minor children in respect of their person and the property given them by such father."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, the husband shall be the legal guardian of his minor wife in respect of her person and property. That is the existing provision. But, in so far as the Bill contemplates the possibility of a minor husband marrying a minor wife, the question is liable to be raised whether the husband, who himself happens to be a minor under the guardianship of some other person, would be the guardian of his minor wife. It is only to deal with such cases that I propose this amendment, *i. e.*, "In line 1 sub-clause (1), Clause 11, add the words "if not a minor" after the word "husband."

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Who else will be the guardian in the case of a minor husband and minor wife?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Any other person, except the husband, under the existing law would be the guardian for both the husband and the wife.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Together?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Not necessarily. It is for that purpose—

PRESIDENT: I think you have two amendments to this Clause. You may move the other also.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move that in line 2 Sub-clause (1), Clause 11, the words "save as regards daughters under the guardianship of their husbands", be inserted after "and."

The amendment is simply to give effect to a prior amendment. We have already made this amendment in a previous Clause, and it is only right that we introduce the same here also.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I second the amendments.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, not that I have got any serious objection to accept the amendment, but I wish to point out that the Section itself is clear, because no minor can be the guardian according to the general law. So it assumes that the husband must be a major and if he is not a major, of course, the wife will have to be under the guardianship of her father. I do not think that there is any doubt about that matter. The amendment is thus superfluous.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I would draw the attention of the mover of the Bill to a similar amendment made and accepted in the Ezhava Bill. I have nothing to add in support of my amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Is there such a thing in the Ezhava Bill? I think it is not in the Ezhava Bill.

[Mr. C. Sankara Menon.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What I recollect is that the amendment was made in the Ezhava Bill.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The father also may be a minor in certain cases. (*Laughter*). We do not provide for such cases.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Under the existing law, the husband will have to be the guardian of the minor wife. That is where we are at.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It presupposes that guardians are *sui juris*.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If so, I withdraw my first amendment.

The amendment was, by leave, withdrawn.

The amendment that, in line 2, sub-clause (1), Clause 11, after "and" the words "save as regards married daughters under the guardianship of their husbands" be inserted, was accepted by the House.

MR. M. N. PILLAI (*Trivandrum*): I move that in line 1, sub-clause (2), Clause 11, the words "a woman" be inserted for "the wife" and that the word "former" be omitted. The use of the word "wife" will narrow the scope of the amendment, because it will relate to cases of children born with a prior husband. It is doubtful whether it will apply to cases where a woman has not married a second time. She need not be necessarily a wife.

MR. V. KUNJUKRISHNA PILLAI (*Chirayinkil*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I think it may be accepted.

The amendment was put and carried.

The following amendments were not moved:—

MR. V. KUNJUKRISHNA PILLAI (*Chirayinkil*): Sub-clause (2). Line 1. Substitute the words "Nayar female" for the word "wife" and delete the word "former."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sub-clause (2). Line 1. Insert after the word "wife" the words "not being a minor."

MR. C. SANKARA MENON (*Quilon*):

Sub-clause (2), line 2: delete the words "or divorced."

MR. C. SANKARA MENON (*Quilon*): I did not move the above amendment because of the passing of Clause 8 by the House. I should think that in that Section an addition has to be made to cover cases where a provision has been made for maintenance of the minor children in the final order of divorce. I wish that the words "subject to the provisions of sub-clause (9) of Section 8 the woman will be the legal guardian of the minor children by a divorced husband" be inserted after "shall" in line 2 of sub-clause (2) of Clause 11.

MR. A. GOVINDA MENON (*Alangad cum Parur*): I second it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is a contingency that overtakes not only the wife who appears before the divorce court but probably the husband also, with respect to the custody of minor children. The divorce court may come to a conclusion against the father or the mother. So, if we simply restrict the operation of that Section to Clause 8, it may be doubted whether the previous provision with respect to the custody and the guardianship of the children under the other Clauses in this Chapter would be controlled by the operation of that Clause. Naturally, we have to take the whole provision following in the section. Section 11 must be controlled by the orders of the court under Clause 8. I am not averse to the spirit of the amendment, but I only point out that it is better to state that all the provisions of this Chapter would be controlled by the provisions made in sub-clause (9) of Clause 8. If the court comes to a conclusion it should not be affected by anything contained in this section.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Even under the Guardian and Wards Regulation, naturally, a guardian may be removed by an order of the court. What is the harm in restricting it to the wife as drafted by the Select Committee?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): We are not contemplating anything under the Guardian and Wards Regulation, but only Clause 8 previously grafted. So, that may not be in conflict with any legislative enactment. Here, we may enact that in this Chapter Clause 11 would be subject to Clause 8. The proviso may control the whole clause.

PRESIDENT: Clause 10 also.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am not satisfied that the proposed amendment is absolutely necessary. The provision in an earlier section does not militate against the cases contemplated in the clause that is now sought to be amended. The possible contingency may or may not occur. That is all that I have to say.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I think that the amendment is unnecessary, because, so far as sub-clause (2) is concerned, it deals only with the minor children by a husband deceased or divorced. It only deals with cases that arise after divorce or death of the husband. The other question will arise only in respect of divorce proceedings, so that this is self-sufficient and self-contained, and there is also no inconsistency between the two. The one will not militate against the other.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I am inclined to accept the amendment. It is not quite correct to say that no provision need be made. Because, in the case of divorce proceedings, in the final order to be passed, the court is entitled to make any order in respect of the custody of the children. They may be entrusted with the father or with the mother.

[Mr. C. P. Kochukunju Pillai.]

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I ask which children he means?

PRESIDENT: This clause relates to the divorced wife.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In such cases the court will have to pass an order as regards the custody of the children according to the circumstances of the case. According to Clause 8 which we have accepted, it is provided that the court shall decide as it may deem proper according to the circumstances of the case. Therefore, in some cases, the wife may be entrusted with the custody of the children and in others the father. I think, therefore, that there is no harm in accepting the amendment.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): The clause in question deals only with those parents of minor children as happen to be the subject of the enquiry in the divorce proceedings.

PRESIDENT: Mr. K. Paramesvaran Pillai refers to the final orders of the court.

MR. C. SANKARA MENON (*Quilon*): Provision will be made by the court for the guardianship of the minor children at the time of passing the final order of dissolution. The children may be entrusted to the custody of the husband or the wife according to the circumstances of the case. Now, the Section, as it stands, provides for the children being in the custody of the mother in a case where divorce is sought for. It may be in conflict with the order of the court. Therefore, it is better to make a special provision in sub-clause 9, Clause 8.

PRESIDENT: I will put the amendment to the vote of the House. The amendment is that after the word 'shall' in sub-clause 2, the words "subject to the provisions of sub-clause 9, Clause 8" be added.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sub-clause 9 in Section 8.

PRESIDENT: We call them Clauses and not Sections until the Bill becomes law.

The amendment that after the word 'shall' in sub-clause 2, Clause 11, the words 'subject to the provisions of sub-clause 9, Clause 8', be added, was then put to the vote, of the House and carried.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): Before the clause is put to the vote, may I point out a defect in it? The clause runs as follows:—

"The husband shall be the legal guardian of his minor wife and the father the legal guardian of his minor children in respect of their person and property."

In a case where divorce—

PRESIDENT: Are you moving an amendment?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): I am pointing out a defect, so that I may move an amendment. The Section, as it is, says: "The husband shall be the legal guardian of his minor wife and the father the legal guardian of his minor children

in respect of their person and property'. Suppose a divorce is desired before the wife attains her 16th year, in a case where the girl might have been married in her tenth year and her parents find some defect or other; as was contemplated in Mr. Govinda Menon's amendment. Who is to be her guardian in order to apply for divorce on her behalf?

PRESIDENT: You mean the divorce of the wife?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunuatur*): No, divorce *on behalf* of the minor wife. If the husband is the guardian of the minor wife in respect of her person and property, as the present Section provides, who is to apply for divorce on behalf of the minor wife, if it is desired before she attains her 16th year? The wife being a minor cannot go to a court of law and apply for divorce from her husband until she completes her 16th year. Evidently her guardian is expected to apply for divorce on her behalf. This Section provides that her husband is the guardian. How can he be expected to apply for divorce from himself on behalf of his wife? I, therefore, propose that the word 'except for divorce' may be added after the words 'minor wife' in Clause 11, sub-clause (1).

MR. M. K. KHADIR PILLAI (*Nominated*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvella*): I object to the amendment, because it is unnecessary and superfluous. It is well known that, when the interests of the guardian are against those of the minor, the guardian may be removed. There is ample provision for that in the *Civil Procedure Code*, and we have already stated that, in these cases, the *Civil Procedure Code* is to apply. I think that will quite do. It is unnecessary to make any further provision with regard to that. When a minor wife seeks divorce from her husband it is clearly understood that the husband's interests cannot be identical with his wife's and the court cannot object to a petition for the removal of the husband from her guardianship.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunuatur*): I cannot agree with my friend. In such cases we will have first to go to a court of Guardian and Wards in order to effect a removal of the guardian.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is no necessity for going to the Court of Wards. There is provision in the *Civil Procedure Code* itself.

PRESIDENT: Will you please explain, Mr. Paramesvaran Pillai?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The husband is ordinarily the legal guardian of his minor wife, but, when the minor wife wants to get a divorce from her husband, of course, the allegation will be that the husband is acting against the interests of the wife and that therefore he cannot act as the legal guardian of the wife. The court will permit her to bring a petition through her next friend, or some other guardian, such as her father or uncle. There is ample provision for that in the *Civil Procedure Code* itself. We have already provided

[Mr. T. K. Velu Pillai.]

that, in these cases, the elaborate provisions of the *Civil Procedure Code* shall apply. There is enough provision there to meet the contingency suggested by Mr. Kochukunju Pillai.

PRESIDENT: You have not applied the provisions of the *Civil Procedure Code* to this Chapter, I think.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The provisions of the *Civil Procedure Code* apply to divorce proceedings.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): I withdraw the amendment.

The amendment was withdrawn by leave of the House.

MR. K. PARAMESVARAN PILLAI (*Tiruvella*): I wish to bring an amendment before the clause is finally voted upon. In Mr. M. N. Pillai's amendment the word 'woman' was substituted for the word 'wife'. That amendment has been carried. Throughout the whole Bill the word 'female' has been used. For consistency's sake I suggest that the word 'female' be substituted for the word 'woman' in Mr. M. N. Pillai's amendment that has already been accepted by the House.

MR. M. N. PILLAI (*Trivandrum*): I have no objection.

The question that the word 'female' be substituted for the word 'woman' was accepted *nem con.*

The question that Clause 11 as amended stand part of the Bill was then put to the vote of the House and carried.

The clause was added to the Bill.

Clause 12.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I rise to move that the existing Section 12 of the Nayar Regulation be substituted for Clause 12 of the present Bill. The Section that I want to put in reads thus:—

"On the death of a Nayar male, leaving him surviving a widow or children, or both, she or they shall, if he has undivided marumakkatayam heirs, be entitled to a half share of his self-acquired or separate property left undisposed of at his death, and if there are no such heirs, such widow or children or both shall be entitled to the whole of such property."

This, Sir, is the beginning of our real difficulties with regard to this Bill. Hitherto we have been testing the strength of the roads which the advance party has made for us. It has been freely conceded by several members in this House that the two most important questions dealt with in the present Bill are individual partition and makka-thayam. We are now going into the real battle field. Battles, Sir, are not won by opinions. They are won by more substantial things than opinions. I shall try to show that, although marumakkathayam is a decaying system, and although marumakkathayam tarwads do not fare so well as they ought to do, yet there are in all parts of the

country tarwads governed by the marumakkathayam law faring tolerably well. No doubt the brother's sentiments towards the sister have undergone some change and the uncle's sentiments towards the niece have changed to a greater extent. The mother's feelings of love and affection remain more or less stationary, because the mother, whatever be the provocation, cannot hate any of her children; so that, with reference to such tarwads when the law says that the karanavan is still the mouth-piece of the tarwads, when the karanavan is recognised to be in management of the tarwad property, and when along with these fortifications of the law there is also the attendant circumstance that some amount of marumakkathayam life still exists, I have risen to make a stand in favour of some healthy portion of the marumakkathayam law which we have still to respect. Sir, in the ordinary Nayar tarwad, the uncle, the brother, and other maternal relations are the only protectors of women. In many parts of Travancore there is more or less a mixed system of makkathayam and marumakkathayam. The wife and children often live in the husband's house. In other parts of the country marumakkathayam exists in its pristine glory. The wife lives in her own house with her children, and the husband "visits" the wife there.

MR. C. SANKARA MENON, (*Quilon*): May I know in which part of the country marumakkathayam exists in its pristine glory?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I thought Mr. Sankara menon on his way from Ernakulam to Quilon must have come across families which are still governed by the marumakkathayam law. If the question had been put to me by any member who does not belong to the Nayar community, I should not be surprised and I should have taken the time of the Council in answering him. But knowing as I do that he is a Nayar gentleman having an extensive practice at the Quilon Bar and that he must have at least travelled through Travancore many a time before he reached Ernakulam, I do not propose to answer the question. I repeat there are a great many tarwads where marumakkathayam is still intact. There are houses in which the husband or the father does not contribute anything to the expenses of the children, and there are tarwads where the karanavan, however much he may be abused, however much he might have fallen from the old pedestal, still looks after the interests of the children of his sisters and other maternal relations. Therefore, Sir, if anybody would get up and say that there is absolutely no vestige of Marumakkathayam life in this country, that statement cannot be accepted. Ideas are however changing, and a large section of the people desire to make effective progress towards makkathayam. But there is another class of people who accept makkathayam only as a goal — those who still contend that the time is not ripe for adopting that system; and there is still a third section, a small section though, which still maintains that marumakkathayam must continue as at present. Sir, we have heard arguments advanced by theorists that the marumakkathayam system is an unnatural system. I cannot see anything at all unnatural in that system. It is, on the other hand,

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as natural as it is archaic. But the experience in other countries and of other communities has shown that people who are living in other systems like the makkathayam system are happier. It does not follow that marumakkathayam is therefore an unnatural or an absurd system. Makkathayam has no doubt several advantages over marumakkathayam in the world of to-day. Still, I do not think anybody will be justified in calling marumakkathayam an unnatural system. There is nothing against marumakkathayam in the dispensations of God. The fact that marumakkathayam is rare in the world ought not to deter us from following marumakkathayam, at least those principles of it which may be of advantage to the Nayar community. There are innumerable Nayar houses in Travancore where the women are protected only by their uncles or brothers or other maternal relations. Section 12 of the Bill as passed by the Select Committee contemplates that a man's property, whether separate or self-acquired, should all pass to his wife and children if he happens to die intestate. No doubt there is a reservation made with regard to the mother. The ideas enshrined in this Bill are makkathayam ideas. I accept makkathayam as a goal. But I would once again request the House to scrutinise the existing conditions and see whether the community is prepared to take a sudden jump in that direction. I would respectfully request my friends in this Council to give me any parallel in the legislative history of the world where makkathayam was advanced in this precipitate manner. It must be remembered that till 12 years ago we had only marumakkathayam, but, now, we have a kind of mixed system. The question is, whether a period of 12 years is enough to cut off entirely from our old customs and to forget the past absolutely. The living together, the solidarity of interests and the spirit of love and amity, though somewhat shackled under the present conditions, still exist in many marumakkathayam tarwads. It is stated by some that the people as a whole are in favour of makkathayam and individual partition. I am inclined to the view that Mr. Paramesvaren Pillai, who observed yesterday, in answer to repeated questions as to the value of resolutions passed at meetings held in different parts of Travancore, that those resolutions were of the nature of propaganda work, was substantially right in his judgment with regard to this matter. If it came from any other gentleman—one who has a lesser degree of acquaintance with the community—I should not have attached much weight to it; but seeing that it has emanated from one who knows the conditions of the Nayar community so well, one who has taken a good deal of interest in the preparation of the present Bill and has always stood up for public causes (*hear, hear*), I think the interpretation is entitled to careful consideration. He said that even the resolutions of which he had personal knowledge, resolutions arrived at in meetings presided over by himself, even they were all of the nature of propaganda work. Sir, when this is the case, am I to believe that the whole community is prepared for makkathayam, that the people are of one mind and that they will be satisfied only with complete makkathayam and nothing else? Was there any necessity for propaganda

work, was there any necessity for these conferences, if popular opinion in this matter was unanimous?

MR. A. HOOGEWERF (*Nominated*): Were not those meetings convened for the purpose of converting the unconverted minority?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Anyhow, that is not the view of Mr. Paramesvaran Pillai, and I do not think Mr. Paramesvaran Pillai is one who requires another's help at expressing his meaning. He can take care of his own ideas. So, I do not propose to take up the time of the Council in answering that question. I am not prepared to explain hypothetical positions.

That aspect of the question therefore, that complete makkathayam all at once is what is supported by all the resolutions passed at different meetings, need not be elaborated. No doubt, a certain amount of weight may be attached to the resolutions of meetings in order to show which way the wind blows. I take my stand not only on what I believe as the opinion of these conferences but also on the authoritative statement made by the mover of this legislative measure. There is the fact that a good number of newspapers are in favour of makkathayam and individual partition. The views expressed by the newspapers are in fact the views of individuals who prefer to remain anonymous. Newspapers are no doubt entitled to consideration. But I do not think they are more authentic or more reliable than the resolutions passed in conferences attended by the members of the Nayar community—conferences in which several enlightened Nayers have chosen to participate. My own feeling in the matter is that there is a good deal of opinion in favour of makkathayam and there is also a good deal against having a compulsory law of makkathayam just at the present moment.

The Ezhava Law committee said:

"There is not one person in the community to say that nothing should go to the wife and children of a deceased Ezhava from the self-acquisition left by him nor would any entertain the idea of providing them with anything less than one-half of the self-acquisition. Of the 802 *viva voce* witnesses questioned on the point, six hundred and seven, including ten ladies, are for allowing the wife and children to inherit the whole of the father's self-acquisition. In other words, about 76 per cent. of the *viva voce* witnesses are for the whole self-acquisition going to children. Territorially considered, the Ezhavas to the north of Quilon who are marumakkathayees with a few exceptions, and the majority, though not so substantial, of the *viva voce* witnesses to the south who are *misradayees*, are of this view."

Later on they continue:

"This is not consistent, for, the allotment of any share for the tarwad on account of its contribution to the acquisition would leave only a fraction, a moiety of which can, in no case, amount to one-half share of the whole. Among the written answers 58 (of which 13 from ladies) are for the devolution of the whole, 13 for more than one-half and 55 for one-half. Though there is a large number of signatures in the written answers for not giving the whole, it should not be allowed to weigh in numerical proportions for the reasons stated in para 8 *supra*."

Then again, later, they say:

"It is contended that the system of the even distribution of the self-acquisition between the children and *seshakars* of the acquirer is a happy combination of marumakkathayam and makkathayam and that no further advance need be made to favour the

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children. Arguments like these which are based more or less on the original ideals of marumakkathayam might have held good at one stage of its progress but are now untenable, being opposed to the present conditions and tendencies."

Later on still, they observe:

"While we make no secret of our approbation of the goal underlying the wish of the majority, we would guard against possible misunderstanding. However high a value we set to the objective, we are far from proposing any change in the law as now administered which is not broad-based on the will of the community and which, we do not at the same time feel, is for their highest good."

Again, the learned mover of the Ezhava Bill, Mr. Subba Aiyar has said:—

"Even among *misradayees* there seems to be a majority, but that majority, I may admit, is only a narrow majority, so that we may fairly take it that, so far as the evidence goes, the opinion of the *misradayam* people seems to be divided."

Then he goes on:

"Under the Law Committee's report the anandaravars were expecting a share of the acquisitions till now, and this they have forfeited by the report of the Select Committee."

Therefore, my point is that the Ezhava community wanted one thing, the Law Committee added something more to it, the Select committee added still more things to it, and when it came to this House, again they got more than what most of the Ezhavas themselves wanted. With reference to that question Mr. Subba Aiyar has observed:

"We have, at the same time, to take into consideration the fact that among Ezhavas the wife lives with the husband from the moment of marriage, both of them work together and the wife contributes a great deal to the self-acquisition of the husband. It was this circumstance mainly which weighed with us; and taking into consideration the growing tendency of the time also, we said that the wife and children should get the whole of it and, in the absence of children, the thavazhee people might get one-half."

So, the general reason which enabled the Ezhavas to get the new law regarding self-acquisition is the fact that the Ezhava woman partakes with her husband in the acquisition of wealth.

Then again, speaking on the same amendment, Mr. Kochukunju Pillai said:

"As a matter of fact, some of the important Ezhavas of my constituency personally told me that not only almost all of them, about 90 per cent., were in favour of the amendments put forward by Mr. Parameswaren, but also that, when they sent their petition signed by about 1000 persons—"

I do not wish to read further extracts from the speeches. My point is that although the Ezhava community got a law of complete makkathayam, to regulate the devolution of self-acquisition, although a large section of Ezhavas were in favour of it, still the legislature went very much beyond what the Ezhavas primarily wanted and what the mover of the Bill originally contemplated. Therefore, the Ezhava Bill is no guide in this matter.

Among Nanjanad Vellalas also, a parallel community living under similar conditions, there is a powerful section in favour of complete makkathayam. But I may remind the Council that in that community the rights of *ukantudama* and the *nankudama* were in

existence for a very long time; so that even in such cases where a member of a marumakkathayam tarwad died before he could get his share from the tarwad, his widow and children were entitled to some portion of the common estate. Now, Sir, to pursue this principle and say that the Nayers are in the same stage of evolution, to argue that, because Ezhavas and Nanjanad Vellalas who have been living under the system of qualified marumakkathayam have gradually advanced a few steps towards makkathayam, the Nayers also should jump into makkathayam is, I fear, imprudent and erroneous because the Nayar community is living in different circumstances from the other communities.

I should proceed now to the basic principles recorded by the Marumakkathayam Committee. I do not read any long extracts. But there are weighty pronouncements. This is what they say:

"The practice of the community, as rightly inferred by the learned President of the Malabar Marriage Commission, is generally to give not the whole but only part of one's acquisitions to his children, especially if there are near relations in the tarwad. If so, to give the whole to the children would be inpolitic, as disappointing legitimate expectations based on public opinion. To do so would be to revolutionise, and not merely to reform the recognised course of inheritance on the strength of public opinion."

Then again the Committee observe:

"To the proposal to give a half share, it is objected that it is the introduction of a mixed system of inheritance and will cause much uncertainty and consequent litigation. This is believed by what we know of the Nanjanad Vellalas and Ezhavas among whom children get a share of the father's properties, generally by private adjustment and very rarely by suit. In a population of less than 19,000 Nanjanad Vellalas in the whole State there were only 20 suits in ten years, i. e., less than two suits per year."

Similar figures are given in regard to the Ezhava Community. I am referring to this to show that the practice was recognised by the members of the community, so that litigation was not rampant. Now, Sir, we have to look into the question whether it is proper on our part to jump from marumakkathayam to makkathayam during a span of ten to fifteen years, when parallel communities took a much longer time to do so. I recognise that there is a feeling in favour of it, but, unless this Council has obtained the opinions of a great many representatives of men and women from different parts of the country, we shall not be justified in advocating radical changes.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): May I know the method of knowing the feelings?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I wanted to say that even at the time when the Select Committee's report was presented. The best means of getting evidence is to pursue the original method of the Marumakkathayam Committee. Appoint a committee of gentlemen who can go into the whole question, travel about the country and examine witnesses, ask them what it is they want, point out the difficulties and invite their proposals to solve them, scrutinise these opinions and then make adequate proposals; that would be the best thing. Anyhow, the analogy drawn between the Nayar, the Ezhava and the Nanjanad Vellala is a false analogy. The Ezhava and the Vellala wanted only a recognition of the existing customs, with

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something added on to it. But so far as the Nayers are concerned, the radical reform that even in families in which there is not the faintest tinge of makkathayam, where there is not the slightest whisper of the husband providing for the wife and children, where it is the uncle and the brother alone that look after the women and their children, the inclination to be fascinated by the customs of other communities, and, to have a law on the lines of their laws—that kind of radical reform cannot be accepted without challenge. The maternal relations are, according to the present law, the heirs to one-half of the properties of an intestate Nayar male. Now, Sir, are we justified in disappointing expectations? The women in a Nayar tarwad, especially where they have got a direct brother or direct uncle, are looking up to him for protection; and they were expecting it all this time as a direct consequence of the law which the Nayar society in Travancore and the Travancore courts have accepted. Their hope has all along been that some portion of the acquisitions made by the brother and uncle would go to them under normal circumstances. I need not dwell at length, on the very great trouble, the hardships amounting almost to misery, experienced by those people to send their male children to places like Trivandrum and keep them at school. The mother would have had to pledge all the few ornaments she possessed. The sister would have to do likewise. Even the distant cousins might have done so. It is very often, without putting the maximum food into the stomach and without having enough to dress themselves with, that the affectionate women of the Nayar community have been maintaining their male relations, sons and brothers and nephews at school. And their hope—

MR. A. HOOGEWERF (*Nominated*): Sir,—

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I do not like to be interrupted. If Mr. Hoogewerf wishes to ask a question, he can ask me at the end of my speech.

MR. A. HOOGEWERF (*Nominated*): Then I may forget it.

PRESIDENT: Mr. Hoogewerf, you may put the question at the end of a sentence.

MR. A. HOOGEWERF (*Nominated*): May I ask Mr. T. K. Velu Pillai whether the same conditions will not prevail then also?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Sir, the question is very important, and I shall answer it. Now I am referring to the circumstance that those people who put themselves to great hardships, have been hoping that some day the brothers or the uncles or the nephews who were studying in Madras, Trivandrum or Ernakulam, or for that matter in London or Edinburgh, would come back with laurels hoping that there would then be a cessation of their difficulties. They hope that the dawn of their comfort and affluence would not be far off. When that is the kind of pious hope upon which these unfortunate women have been living, the proposed law steps in to say that

a man who has taken the fullest advantage of these feelings and sacrifices lives and ought to live for his wife and children alone; that these women who made him what he is, who made him an agreeable husband to a suitable girl, that these women should not have any share of his property. It might be asked, Sir, how the women in makkathayam societies continued to be happy under their law. It is well-known that among makkathayam people there is the dowry for the women which in certain cases exceeds the shares of the sons. The condition of the marumakkathayam tarwads is different; it is because the court recognised this custom, it is because the legislature did not interfere, that women continue to lavish all their care and attention and solicitude, their scanty earnings and the results of their industrious borrowings, on the education of their maternal relations. The times, no doubt, are changing, and hereafter, it is not likely that the old spirit will be as robust and sanguine as it was. But there are women living who have put themselves to all this suffering. There are women living who expect that these boys who have been thus educated will be of some use to them and their children. Now, all of a sudden, the Travancore Legislative Council, a body composed of enlightened men, proceeds to enact a law which has the effect of saying to the woman: "Look here, woman, we shall not give you anything. We are intent on voting away your rights, your hopes and your expectations" Is this not cruelty? I hope I shall not be misunderstood. I do not say that the claims of the sister, the mother and her children need be superior to the claims of the wife and the sons and the daughters. But the claims of the former class of relations have entered into the formation of our character and our habits. Changes may be necessary. But the general conditions of our society demand that we ought to give some breathing time—a few years—for the inevitable change; so that those unfortunate people who have been nurtured in the present conditions may pass out of the world, and not remain here to shed tears or be the ghosts to trouble joy. A dozen years ago this Council gave the impress of its approval to the strongly expressed opinion of the Nayar Community that a portion of an intestate male's property should devolve on his widow and children. Their readiness can never be praised too much. The proposal was just and benevolent and they signified their assent to it. They also provided for full testamentary capacity. If, then, a man wants to give everything he has to his wife and children, he has got the power. Let him by all means do so. If he does not want to give anything to his sisters and children let us not compel him. But the question is whether the legislature will be justified in stepping forward abruptly to say: "Look here my good man, if you want to give anything to your sister or her children, you must execute a will; otherwise the law would say that it belongs to your wife and children alone." It may be asked why the loving brother could not execute a will in favour of his sisters and their children. It is well known, Sir, that in respectable Nayar tarwads younger sisters do not move freely with their brothers. They do not mix in each other's society; so that the law ought to step in and fortify the original situation. On the other hand, although in places like North

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Travancore there is not a prevalent custom that the wife should live with the husband, still the wife and the husband certainly have facilities to know each other better. There will be better association in future; the children will be playing about the father; the wife will have the opportunity of representing her wishes to the husband. He may also have the necessary inducement because of the growing association of the wife. On the other hand, the sister has no adequate means of acquainting the brother with her wants and wishes. So, in the present conditions of Nayar society, when the sisters cannot get enough or sometimes anything at all from their husbands, and when there is some earning member in the family who may be indented upon during certain occasions for smaller things and perquisites, when naturally the sisters and the children hope to get something from the brother and uncle—the law ought to respect the existing custom. The rights of the wife and children are now being respected by the existing law, and if the whole inheritance is proposed to be given to them, that may be done by a testament. I do not therefore see why there should be so much of weeping and wailing created in innumerable Nayar households by telling the mother and the sisters that the brother on whom the sister doted, that the son who was the hope of declining years, is a stranger so far as his property goes, and that no particle of his property should go to the persons who suffered so much in order to make him a rich man.

MR. A. HOOGEWERF (*Nominated*): May I ask Mr. Velu Pillai whether they have not got a father?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Yes, certainly there must be fathers; otherwise how can children be born? (*Laughter.*) Mr. Hoogewerf ought to know the Nayar society as he was holding important official posts in all parts of Travancore. The difficulty was that formerly the father did not give much, or anything to the children. That was the trouble then. But that was rectified. If a man leaves property, his wife and children ought to get a good portion of it, and the present law provides that 50 per cent. shall go to them.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I ask as to what the father does with the money if he does not give it to his wife and children?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I think Mr. K. Paramesvaran Pillai knows it as a father himself.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I wish to have an answer from Mr. T. K. Velu Pillai to that question.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): The tendencies of fathers may differ. Some people may spend money on clothing (*laughter*); some on eatables (*laughter*); some may attend theatres. (*Loud laughter.*) But of course tastes may vary. There are very many ways of spending money, good ways and bad ways. However, there is a large majority of fathers in some parts of the country

who have not yet thought of giving the whole of their property to their children; and there are a few even now who do not want to give anything to their children, and therefore, the law directs that one-half of what is left should go to them. It is surely equitable. But, we ought not to do anything to make life miserable to these women—sisters and others—who deserve at least justice and fair-play at our hands.

There is one further argument in this that the present Bill itself does not strike at marumakkathayam completely. In that case there would have been at least a logical position. Once we do away completely with marumakkathayam we need not have any shackles on makkathayam. But marumakkathayam is still perpetuated in the Bill. There are the definitions of karanavan and anandaravan. There are more substantial facts. Section 17 says that if a female has no lineal descendant, her property goes to the mother's thavazhee. Section 18 says that, in case the female dies, leaving children and lineal descendants of deceased children, they shall take the whole of the property left undisposed of by her. Section 19 says that, when the female dies leaving no lineal descendants, the whole of her property shall devolve on her mother's thavazhee. Section 20 says that, if the female dies leaving her surviving only her husband and her grandmother's thavazhee, one-half of her estate shall be taken by the husband and the other half by the grandmother's thavazhee. Section 21 says that, if she dies leaving none of the heirs mentioned above, the property shall devolve on the thavazhee of her great-grandmother or on the thavazhee of her more remote female ascendants, the nearer excluding the more remote. It will also be found that the karanavan in all these cases, is to be in possession of the property. Therefore the present bill does not do away completely with marumakkathayam. It seeks to modify marumakkathayam to remove the existing defects so far as they may be. I am inclined to hold that this Bill recognises to a very great extent the force of the old marumakkathayam ideals. "You may crystallise and recrystallise a soluble salt; the crystals will always be of the same shape". That seems to be the case in endeavouring to get rid of old associations and old institutions. When the wife and children have already obtained the right of getting one-half of the intestate's property, is that not enough unless there is a more effective and more certain means of collecting the opinions and feelings of the people concerned,—the opinions of men and the opinions of women—in favour of any drastic change?

The Travancore Nayers cannot isolate themselves from their kindred. The Nayers in Cochin and the Nayers in British Malabar belong to the same stock. The bundle of habits is more or less the same with all. The Malabar Nayar or the Cochin Nayar has not yet become a makkathayee. We are living under a ruler who is himself a marumakkathayee. There may be those who say that, by one stroke of the pen, or by one process of throwing up of our hands in the Council, a very old law may be immediately changed; but I am unable to follow suit and do likewise.

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There are some other difficulties also which I may place before this Council for careful consideration. As I have very often been saying during this session, the Nayar who is a Hindu still believes in certain religious duties. On Amavasya days in the month of Karkadakam, for instance, the Nayar goes to Tiruvallam or other holy places to perform the *Sraddha* rites, thinks of the names of his uncle, his grandmother and her grandmother and other maternal relations. It may be a wrong custom, according to the reformer; it may not be quite logical. It may be called superstition; but the argument that, from the first of Chingam 1100, no *Sraddha* need be performed by an anandaravan is absurd. Mr. Nidiry is asking as to whether the anandaravars will not perform the *Sraddha* hereafter also; and as he does not belong to the Nayar community, I have a duty to tell him that, though the law does not change when property passes to others, the anandaravan may not perform the *Sraddha*; because the principle which obtains among the Hindus generally is that the right to succession follows the way of performing the *Sraddha*. The custom of performing these *Sraddhas* for the manes of the uncles has been in existence and will be in existence at least so far as the present generation is concerned. My friend's question puts me in mind of the case of a certain Greek scholar who in the course of a famous book observes that among—

PRESIDENT: Your time is up.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*). May I say, Sir, that I am the only man who has given notice of this motion.

PRESIDENT: You have already taken up an hour.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am sorry; I shall wind up my arguments.

This Greek scholar said that the Greek Gods were controlled by public opinion, so that if anybody thought a God need not be worshipped, that God was dislodged from the Pantheon. But we cannot afford to do that. Feelings and sentiments have to be taken into consideration. Another fatal objection to the acceptance of the present Bill is that, when the ground has not been sufficiently traversed and opinions have not been properly recorded, when the women who have been the stocks of descent in marumakkathayam tarwads have not been consulted, when they have not asserted that in spite of the dangers of the system they are prepared to accept makkathayam and give up marumakkathayam, when enough has not been done in this direction any, superstructure of idea based on false analogies or incorrect parallels must tumble to the ground.

The acceptance of this amendment will not be to the detriment of the widow and children. It is provided that, if there are undivided marumakkathayam heirs, one-half of the deceased man's property goes to them and the other half to the wife, child or children. So far as the

Select Committee's Report is concerned, Section 35 and the following Sections lay down that partition may be effected. It is stated that the trend of public opinion is in favour of individual partition. If that be so, once individual partition is granted, the whole property, whether self-acquired or separate, would only go to the wife and children when once a division is effected. In effect, therefore, Section 35 enables a man to make himself a makkathayee, to prevent any share of his property going to maternal relations. I do not think that we shall be justified, contrary to expectations and quite contrary to habits, in telling these women who have been long expecting something from males of their thavazhee, that they shall not get anything at all. The interests of women make it imperative that they should be consulted.

It was Bentham who said that—"if there was to be any difference in treatment between the sexes, it ought to be in favour of the feebler, in favour of women, who have more wants and fewer means of acquisition or of employing profitably what they possess. But the stronger have had all preferences. Why? Because the stronger have made the laws."

It is the sacred duty of this Council to prevent any invasion of the rights of women. Sir, I am sorry that I have taken up so much time, but considering the importance of the question, and on account of the strong feeling which prevails in the country on this subject, I am placing these matters respectfully before the Council for kind consideration and prudent action.

MR. M. N. PILLAI (*Trivandrum*): I second it.

The Council rose for lunch at 2-15 P. M. and re-assembled at 3-18 P. M.

PRESIDENT: Mr. M. N. Pillai has seconded Mr. Velu Pillai's amendment.

MR. P. PARAMESVARAN (*Nominated*): സപാമിൻ, ഇപ്പോൾ മിസ്റ്റർ റി. കെ. വേലുപ്പിള്ള അവതരിപ്പിച്ച അമൻഡ്മെൻറിന് അനുകൂലമായി ഞാൻ അഭിപ്രായപ്പെടുന്നു. ഈ അനുകൂലാഭിപ്രായത്തനുള്ള എന്റെ കാരണങ്ങളെ വിശദമാക്കുന്നതിനായി ഈ വകുപ്പിന്റെ വ്യാപ്തിയേയും അതിൽ അടങ്ങിയിരിക്കുന്ന ഗ്രാമത്തേയും പറ്റി സാമാന്യമായി സ്വല്പമാത്രം നിരൂപിക്കാനുണ്ട്.

ഈശ്വരന്റെ ഇടയിൽ പണ്ടു പണ്ടെ നടപ്പുള്ളതും ഊഹ്യവുമായ മിശ്രദായക്രമം സ്ഥാപിച്ചു കിട്ടണമെന്നു വാദിച്ചു കൊണ്ടിരിക്കുന്ന എന്നോളം ഈ അമൻഡ്മെൻറിൽ അടങ്ങിയിരിക്കുന്ന തത്വത്തെ മനഃപൂർവ്വം അഭിനന്ദിക്കുന്നവർ അധികം കാണുകയില്ല. ഇതിൽ ഖൗകി

[Mr. P. Paramesvaran.]

കുറയ്ക്കുന്ന തത്വം മാത്രമല്ല പാരമ്പര്യമായ തത്വവും അന്തർവിചിരിക്കുന്നു. സെലക്ടർ കമ്മിറ്റിയിൽ തീർച്ചപ്പെടുത്തിയ വിധത്തിലുള്ള ൧൨-ാം വകുപ്പിലും വസ്തുവിഭാഗത്തെപ്പറ്റിയുള്ള മറ്റു വകുപ്പുകളിലും അടങ്ങിയിരിക്കുന്ന തത്വങ്ങൾ ഈ കൌൺസിലിന് ആലോചനയ്ക്ക് എടുക്കുവാൻ കൂടി അധികാരമില്ലാത്ത സംഗതികളെ സംബന്ധിച്ചവയാകുന്നു. എന്തുകൊണ്ടെന്നാൽ ൧൦൯൭-മാണ്ടത്തെ ൨-ാം റഗുലേഷനായ നിയമസഭാറഗുലേഷൻ ൧൧-ാം വകുപ്പിൽ ഏതേതു സംഗതികളെപ്പറ്റി നിയമമുണ്ടാക്കാൻ ഈ സഭയ്ക്ക് അധികാരമില്ല എന്നു പറഞ്ഞിട്ടുണ്ട്. ആ കൂട്ടത്തിൽ ആ റഗുലേഷൻ ൧൨-ാം വകുപ്പിന്മേൽ ചണ്ഡത്തിൽ "നമ്മുടെ പ്രജാസമൂഹത്തിൽ പെട്ട ഏതെങ്കിലും വ്യക്തിയുടെ മതത്തെയാകട്ടെ സംബന്ധമായ ക്രമങ്ങളെയാകട്ടെ ആചാരങ്ങളെയാകട്ടെ ബാധിക്കുന്ന യാതൊരു വ്യവസ്ഥയും നമ്മുടെ ദിവാന്റെ രേഖാമൂലമായ മുന്നനുവാദം കൂടാതെ യാതൊരു സാമാജികനും ഹാജരാക്കുന്നതു നിയമാനുസൃതമായിരിക്കുന്നതല്ല" എന്ന് പറഞ്ഞിട്ടുണ്ട്. നായർ ബിൽ സെലക്ടർ കമ്മിറ്റിയിൽ തീർച്ചപ്പെടുത്തിയ ൧൨-ാം വകുപ്പ് ഈ നിഷേധത്തിൽ ഉൾപ്പെട്ടതാണെന്നു ഞാൻ കാണിക്കാം.

ബ്രാഹ്മണർ തുടങ്ങി ചണ്ഡാളർ പശുക്കളുള്ള എല്ലാ ചിന്താ സമുദായത്തിന്റെയും ദായക്രമം അവരുടെ മതാചാരങ്ങളുടെ നിലനില്പിന് ഭേദമില്ലാത്ത അർത്ഥം അഭേദമായി ഘടിപ്പിച്ചു പൂർവ്വകാലം മുതൽക്കേ സ്ഥാപിച്ചിട്ടുള്ളതാകുന്നു. അതായത് മതാചാരമനുസരിച്ച ദായക്രമവും ദായക്രമത്തെ ആസ്പദമാക്കി മതാചാരങ്ങളും പരസ്പരം യോജിച്ച് അഭേദമായി കല്പിക്കപ്പെട്ടിരിക്കുന്നു. എങ്കിലും ഇവയിൽ ഏറ്റവും പ്രധാനമായും മതാചാരങ്ങൾക്കാണ് കല്പിക്കപ്പെട്ടിരിക്കുന്നത്. ഇതിനു വിപരീതമായി ഏതെങ്കിലും ഒരു സമുദായത്തിന്റെ ദായക്രമത്തെ മേലിലാൽ മതാചാരവും മതാചാരത്തെ മേലിലാൽ കർമ്മബന്ധത്താലാകാം നശിച്ച് മതഭ്രഷ്ടരും കർമ്മബ്രഹ്മരും ആയിത്തീരുന്നതാണ് എന്ന് ചുവടെ പറയുന്ന കാരണങ്ങളാൽ വ്യക്തപ്പെടുന്നതാണ്.

ഏതെങ്കിലും ഒരു നായർ തറവാട്ടിലെ ആകെക്കൂട്ടം അംഗങ്ങൾ പത്ത് എന്നിരിക്കട്ടെ. അവരിൽ നാലുപേർ അന്ത്യമതത്തിൽ ചേർന്നു എന്നും വരട്ടെ. ആ ഒൻപതുപേരും തറവാട്ടുസ്വത്തിനു അവകാശികളല്ലാതായിത്തീരുന്നു. ഈ വിഷയം മതാചാരപ്രധാനമാകയാൽ തറവാട്ടിലെ മെജാറിറ്റിയെ തീരെ ഗണിക്കുന്നില്ല. എന്നു മാത്രമല്ല ഇവർ പ

ആപേക്ഷ ഒരു തള്ള പ്രസവിച്ച മക്കളായിരുന്നാൽ തന്നെയും പ്രകൃതി സിദ്ധമായ ശരീരസംബന്ധവും നശിച്ചുപോകുന്നു. അത് ആ തറവാട്ടിലെ പൂർവ്വികന്മാർ പരമ്പരയായി സ്ഥാപിച്ചു വന്നിട്ടുള്ള തറവാട്ടു സമ്പ്രദായവും അതിലേക്കുള്ള സ്വത്തുക്കളും തങ്ങളുടെ മത കർമ്മങ്ങളേയും മതസ്ഥാപനങ്ങളേയും വിധിപ്പടി പരിപാലിച്ചു തറവാട്ടു ശാശ്വതമായി അനുഭവിച്ചു കൊള്ളണമെന്നുള്ള സങ്കല്പം പ്രധാനമായ ഏർപ്പാടാകയാൽ മാത്രമാകുന്നു.

ഈ നായർ ബിൽ ചേൽപ്രകാരം മതാചാരങ്ങളുടെ നിലനില്പിന് ആസ്പദമായിരിക്കുന്ന തറവാട്ടിനെ നശിപ്പിച്ച് മതാചാരത്തെ ഭേദിപ്പിക്കുന്നതാണെന്ന് ഇനിയും പറയാൻ പോകുന്ന കാരണങ്ങളാലും തെളിയിച്ചുകൊള്ളുന്നു. മുതമക്കത്തായസ്വത്തിൽ ഒരാൾ മരിച്ചാൽ സംസ്കാരം, ബലി, ആട്ടബലി മുതലായവ നടത്തുന്നത് അവരുടെ തറവാട്ടിലെ ചുമതലാധികാരികളായ അനന്തരവന്മാരാകുന്നു. തറവാട് ആളെണ്ണിഭാഗിച്ച് ഓരോരുത്തരുടേയും ഓഹരി അവരുടെ മക്കൾക്കു കൊടുത്താൽ തറവാട്ടും മേല്പറഞ്ഞ മതാചാരങ്ങളും തറവാട്ടുവകയായ ക്ഷേത്രങ്ങളും തറവാട്ടിലേക്ക് ഉത്തരമസ്ഥാപനമുള്ള ക്ഷേത്രങ്ങളും നശിച്ചു പോകുന്നതാകുന്നു. ഇതിനാൽ ആളെണ്ണി ഭാഗം തറവാട്ടു നാശവും മതാചാരാനുഷ്ഠാന വിരോധവും ഉണ്ടാക്കി രീക്ഷണതാകയാൽ മേല്പറഞ്ഞ മതാചാരങ്ങളെ അവഗണിച്ചുള്ള തറവാട്ടുഭാഗം ഒരിക്കലും ചെയ്യത്തക്കതല്ല. ചെയ്യുന്നത് മതാചാരവിരുദ്ധവും ആകുന്നു. നായർ തറവാട്ടിൽ മുതലവകാശമുള്ള ഒരു സ്ത്രീ പ്രസവിച്ചാൽ “വാലായ്മ” എന്നും ഒരംഗം മരിച്ചാൽ “പുല” എന്നും പല ആചാരങ്ങൾ ഉണ്ട്. ഈ ആചാരങ്ങൾ ഹിന്ദുസമുദായത്തിൽപെട്ട സകല സമുദായങ്ങളും അവരവരുടെ ദായക്രമമനുസരിച്ചു ആചരിച്ച് വരുന്നവയും ആകുന്നു. നായർസമുദായത്തിലെ പുല, വാലായ്മ എന്ന ആചാരങ്ങൾ തറവാട്ടിലെ അംഗങ്ങളെ സംബന്ധിച്ച കാര്യങ്ങളിലാണ് അനുഷ്ഠിക്കാറുള്ളതു. തറവാട്ടിലെ പുരുഷന്മാർക്കു മക്കളുണ്ടാകുമ്പോഴോ ഭാര്യയും മക്കളും മരിക്കുമ്പോഴോ ഇതുകൾ അനുഷ്ഠിക്കാറില്ല. തറവാട് ആളെണ്ണി ഭാഗിച്ച് മക്കൾവഴിക്കു സ്വത്തു വിനിയോഗിക്കുന്നതായാൽ മേല്പറഞ്ഞ പുല, വാലായ്മയാചാരങ്ങൾ നശിച്ചുപോകുന്നു. ആ ആചാരനാശത്താൽ ക്ഷേത്രപ്രവേശനവിരോധം മുതലായ വൈദികകല്പനകൾക്ക് ഉൾപ്പെടേണ്ടതായ കഷ്ടതകൾ നേരിടുന്നതിനും മറ്റു പല കഴപ്പങ്ങൾ ഉണ്ടാകുന്നതിനും ഇടവരുന്നതാണ്. ഹിന്ദു സമുദായത്തിൽപെട്ട യാതൊരു സമുദായത്തിന്റേയും ദായക്രമം ഏതൊരു കൌൺസിലുകളുടേയും ഭൂരിപക്ഷത്താൽ സ്ഥാപിതമായിട്ടുള്ള

[Mr P. Paramesvaran.]

വയലു. അവ പൂർവ്വകാലം മുതൽക്കുതന്നെ മതാചാരപ്രധാനമായി കല്പിക്കപ്പെട്ടിട്ടുള്ളതാണ്. അതിനെ ഭേദപ്പെടുത്താൻ ആർക്കും അധികാരമില്ല. ഇതേവരെ ഏതെങ്കിലും ഒരു സമുദായത്തിന്റെ ദായക്രമം നിയമസഭ ഭേദം ചെയ്തിട്ടുള്ളതായി അറിയുന്നില്ല. ൧൦൮൮-ലെ നായർ റെഗുലേഷനിൽ ഈ വക തറവാട്ടിനേയും മതാചാരങ്ങളേയും നശിപ്പിക്കത്തക്കതായ യാതൊരു വ്യവസ്ഥയും ഇല്ലാതിരുന്നതിനാലാണ് ആ റെഗുലേഷൻ നിയമസഭയും വലിയതമ്പുരാൻ തിരുമനസ്സുകൊണ്ടും പാസ്സാക്കാൻ ഇടയായത്. അതിൽ ഓരോരുത്തരുടേയും സ്വാർജ്ജിതത്തിൽ ഒന്നുപകുതിമാത്രം മക്കൾക്കു ചെയ്യുന്നതാണെന്നുള്ള വ്യവസ്ഥയാണ് വിശേഷവിധിയായി ഏർപ്പെടുത്തപ്പെട്ടത്. സ്വാർജ്ജിതം മുഴുവനും സ്വേച്ഛാനുസരണം വിനിയോഗിക്കാൻ അധികാരമുണ്ടായിരിക്കെ അപ്രകാരം ചെയ്യുന്നവരുടെ മരണാനന്തരം നേർപകുതിക്കുമാത്രമേ കൊടുക്കാവൂ എന്നു നിയമമുണ്ടാക്കിയത് തറവാട്ടിന്റെ നിലനില്പിനും സമുദായാചാരത്തിന്റെ നിർവഹണത്തിനും വേണ്ടി മാത്രമാണ്.

ഈ ബിൽ അനുവദിച്ചു പാസ്സാക്കുന്നപക്ഷം ഓരോ തറവാട്ടിലേയും പ്രായപൂർത്തിയുള്ള ഓരോരോ അംഗത്തിന്റേയും ഒന്നായുള്ള, സമ്മതവും അപേക്ഷയും ബോധ്യപ്പെടുത്തിനുശേഷമേ ആ കഡംബത്തെ ബില്ലിനാൽ ബന്ധിക്കുവാൻ പാടുള്ളു എന്നൊരു ഏർപ്പാടുകൂടി ഉണ്ടായിരിക്കണം. അല്ലാത്തപക്ഷം എത്രയോ തറവാടുകൾ അന്യായമായി നശിച്ചുപോകാൻ ഇടയാകുന്നതാണ്. ഈ പുതിയ നായർബിൽ പ്രയോഗിക്കാൻ അനുവാദത്തിന് അപേക്ഷിക്കുകയും അനുവാദം നൽകുകയും അനുവാദം അനുസരിച്ചു ബിൽ പ്രയോഗിക്കുകയും ഇത്രത്തോളം ദശയിൽ വളരുകയും ചെയ്തിരിക്കുന്ന ഈ അവസരത്തിൽ ബില്ലിന്റെ മൂലതത്വത്തെപ്പറ്റി പറയുന്നതിന് യാതൊരു മെംബർക്കും അവകാശമില്ല എന്നൊരു വാദം ജനിക്കും എന്ന് എനിക്കും അറിയാം. എന്നാൽ ഈ ബില്ലിലെ വ്യവസ്ഥകൾ നിമിത്തം മതകാര്യങ്ങൾക്കും മതാചാരങ്ങൾക്കും ദോഷം വരുമെന്നുള്ള വിചാരം അക്കാലത്തില്ലാതിരുന്നതിനാലാണ് അങ്ങനെ അനുവാദം തരാൻ ഇടയായിപ്പോയത് എന്നു ഞാൻ വിചാരിക്കുന്നു. ഇക്കാരണങ്ങളാൽ ഇപ്പോഴത്തെ ൧൨-ാം വകുപ്പിനെപ്പറ്റി മിസ്റ്റർ റി. കെ. വേലുപ്പിള്ളയുടെ അമൻഡ്മെന്റിനെ സ്വീകരിക്കുന്നപക്ഷം മതാചാരങ്ങൾക്കു വിരോധം നേരിടുന്നതല്ലെന്നും അല്ലാത്തപക്ഷം ഈ കൌൺസിലിന്റെ പ്രവൃത്തി നിയമവിരുദ്ധമായിരിക്കുമെന്നും ഞാൻ വിചാരിക്കുന്നു.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I object to the amendment proposed by Mr. Velu Pillai. The effect of the amendment, if accepted, would be to change the whole scheme of the Bill now before the Council for its consideration. I fully recognise the spirit, as Mr. Velu Pillai put it, with which he moved the amendment. I also recognise the fact that he had in mind something more than the interests of the tarwad in moving this amendment. Nevertheless it appears to me that he has the distinction of being rather unique in this matter. If there is one portion of this Bill which has received absolutely no protest from any quarter whatsoever, it is this portion relating to intestate succession. There were various protests and amendments by several members; various criticisms were made on the Bill in the press, on the platform and by individual members. But this is the first time that I hear any objection to the portion relating to intestate succession in the Bill. Mr. Velu Pillai seems to think that it is a revolutionary change. He seems to think that even in 1088 it was rather a corrective to have given the right to the children.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I did not say so.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): At any rate he told us that ten years--he evidently counted from the year 1088, the year in which the Nayar Regulation was passed--ten years were not sufficient to change the manners and customs of the people. From what I know about this matter, I think that it was undoubtedly not in ten years that the feelings of the Nayar community upon this matter became shaped. But there is evidence to show that at least for more than two hundred years the sentiments and opinions of the community in this matter have begun to change. I have read in Kunjan Nambiyar, one of the famous poets of Malayalam Literature, that the karnavan gave constant presents and gifts to his wife and children and impoverished the tarwad. That was one of the complaints made by the anadaravars against the karnavans even in those ancient days. Kunjan Nambiyar lived about two hundred years ago and he has described the state of the tarwads in those days very accurately though humourously; and therefore it appears to me that the change in the opinions of the people must have begun at least two hundred years ago. Probably, the disruption of the tarwad also had begun then.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I may correct my friend. With regard to the change of the tarward it was that I said fifteen years. What I said was that the idea of the whole of the self-acquisition going to the wife and children was not more than ten or fifteen years old.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is what I say. The complaints of presents to the wife and children at the risk of impoverishing the tarwad and at the expense of the tarwad began more than two hundred years ago. At any rate, it was prevalent during the time of Kunjan Nambiyar. Mr. Velu Pillai quoted Justice

[Mr. K. Paramesvaran Pillai.]

Holloway. But I hope Mr. Velu Pillai has also read Mr. Mayne's comments on the same. He seems to think that long ago the Nayar tarwads would have become completely disrupted and the marumakkathayam tarwads would have been superseded by makkathayam tarwads if the British courts, had only permitted them to do so. The British Courts came at a time when the tarwad system was undergoing a flux, but the British courts, instead of allowing it to go on, stiffened and solidified the law as it stood then and made it impossible for the law to progress or to make changes excepting through the help of the legislature. So, Mr. Mayne says that if the law allowed them to do so, marumakkathayam tarwads would have long ago become disrupted, marumakkathayam families would have ceased to exist and makkathayam would have superseded them long ago. That seems to have been Mr. Mayne's opinion. Partition was prevalent in marumakkathayam tarwads long ago. I may also refer to Justice Holloway's opinion in another respect. He also speaks of the interests of the karnavan conflicting with his duty. What does the expression 'the interests of the karnavan conflicting with his duty', mean? His interest is to benefit and to protect his children while his obvious duty is to manage the tarwad to the best of his ability for the benefit of his anandaravars. So, he has to make constant misappropriations of tarwad funds for the purpose of maintaining his wife and children. So that, this makkathayam tendency is not the growth of the last ten years or twenty years. It appears to me that it is the growth of the last two or three centuries and it received a set back at the hands of the British courts in Malabar.

In Travancore also, the partition of marumakkathayam tarwads was very common and I have myself seen judgments in which the Travancore High Court itself decreed partition of tarwad property. The result would be the formation of makkathayam groups. It has often been complained against the Malabar judges who came here later and who were appointed in our High Court, that it was they who prevented our progress towards makkathayam, because their opinions of Malabar law as laid down by Justice Holloway tended to re-establish the old order of things in Travancore also. The Marumakkathayam Committee which sat in 1084 or 1085 took evidence and the evidence was very much in favour of giving at least a portion of the acquisitions of an individual member of a Marumakkathayam tarwad to his wife and children, and the marumakkathayam Committee itself thought that the system was unnatural and the inheritance should properly be in the line of lineal descendants. But they thought that a custom had grown up against it and a violent change in the custom was not expedient or politic, and therefore they recommended that one-half of the self-acquired or separate property of a deceased Nayar should devolve upon his wife and children and the other half upon his undivided marumakkathayam heirs. That was only the very first step. Since then, there has been agitation in the press and on the platform for individual partition. This opinion has been growing for the last ten years and makkathayam was always associated with individual partition. Once

individual partition was established makkathayam followed as a matter of course. According to the Nayar Regulation as it now stands, Individual partition it was thought would inure to the disadvantage of Nayers unless it led to the formation of makkathayam families and therefore those who advocated individual partition also advocated that makkathayam should be established side by side. It was therefore in pursuance of the growing sentiments of the community that this Bill was drafted on these lines. We have practically provided for individual partition in this Bill, and as a result of it, when we become divided, the property descends to the lineal descendants. Now, I have already submitted that it is also the direct result of Regulation I of 1088—that is the Nayar Regulation. According to the Nayar Regulation itself, if a person becomes divided from the tarwad and leaves no undivided marumakkathayam heirs, then all his properties would devolve upon his wife and children, if any, surviving him. Once the principle of individual partition was accepted, then it should follow as a matter of course from Regulation I of 1088 itself, that the line of descent must be makkathayam and not marumakkathayam; that is, the change of devolution of property from marumakkathayam to makkathayam, I submit, is merely the natural result of Regulation I of 1088, and of the provision for practically individual partition in this Regulation. These put together, without any special enactment, stand for the makkathayam system of inheritance. Therefore, it appears to me that this is not a revolutionary change. It is a change which has been the result of time and the growing sentiments of the community for the last several years, more than a century or more, although it received a set-back in the interval, namely, in the days of British Judges. But we had to get out of that difficulty by means of legislative enactments, and we made the first attempt in 1088. We are not now satisfied with that piece of legislation, and as a consequence of the acceptance of the principle of individual partition in this Bill, provision has to be made for complete intestate succession. So that, no revolutionary change is sought to be introduced into it. This change would have come about many years ago had the circumstances been otherwise. It is already too late. I may say, it should have come several years ago for the purpose of protecting the interests of the Nayar community as a whole, and now that it has come, nobody can complain that it has come too early. The reform has been long overdue and it has come not a day too soon. I do not therefore agree with my friend Mr. T. K. Velu Pillai in thinking that this reform is revolutionary or that it is premature. Now Mr. Velu Pillai has been saying that we shall be defeating expectations if we do not give a portion of our acquisition to our nephews, nieces and other marumakkathayam heirs, because they would be expecting under the present law to inherit one-half of the self-acquired property of a deceased person.

In the first place, from Mr. Velu Pillai's own statement it appears to me that the anandaravars cannot legitimately be entertaining any expectations to succeed to their karanavan at all, because Mr. Velu Pillai

[Mr. K. Paramesvaran Pillai.]

was complaining that, in North Travancore or in other parts of Travancore, they do not leave their acquisitions to their anandaravars. I asked him as to what they did with their money, in case they had any money. He said that they spent their money upon fancy dress, theatres and luxuries of that kind. (Laughter.) Therefore —

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I said that some persons would spend the money in that way.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): At any rate he did not tell us that any portion would go to the maramakkathayam heirs. If that is so—

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): A word of personal explanation. Because I did not say a thing which is known to everybody it does not mean that my case loses its force. Does Mr. Paramesvaran Pillai seriously believe that nobody gave any money to his sisters or other marumakkathayam heirs?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): At any rate, Sir, that was the answer we got and we have to build upon that answer.

Again, I submit, Sir, if, as I contend that the modern tendency has been for a man to love his wife and children and to live with them and to give them all his acquisitions, the sisters also being wives and daughters would naturally not build any expectations on the acquisitions of their brothers and uncles. They know that, when they expect to get all the acquisitions of their husbands and their fathers, they cannot logically expect to inherit the acquisitions of their Marumakkathayam relations.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I ask Mr. Paramesvaran Pillai if there is not a large number of unmarried women in Nayar tarwads?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I do not know. Of course there are married and unmarried women in every community.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Is marriage compulsory among Nayars as in the case of the Mitakshara Hindus?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I do not know that marriage is compulsory in any community; at any rate, I know that marriage is not compulsory with Nayars.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is it in the sense that it is not punishable under the criminal law?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Yes, in every sense.

In that case, I submit there is no reason of any expectations being entertained by a person in respect of the properties of a brother or a sister or of any other marumakkathayam relative. I do not agree with

the Marumakkathayam Committee in thinking that the system is unnatural, though I say so with due respect to the views of the committee. It depends upon the stage of the particular society. In some stages of the society marumakkathayam will be more natural than makkathayam, and, in some other stages of the society, makkathayam may be more natural than marumakkathayam. I do not put it upon that ground. But the question is, what should be the policy of the legislature, what is the custom and what is the tendency of the community as a whole? The Council knows that, as a matter of fact, the tendency in modern times among Nayers has been for each man to live with his wife and children and not in his tarwad. It has become practically impossible for any man to live with his sisters and brothers. Excepting in the matter of the law of inheritance, most of the Nayers are practically makkathayees, because they do not live in their tarwads but in separate houses with their wives and children.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I ask Mr. Paramesvaran Pillai what percentage among the Nayar women in Travancore, say in the Kottayam Division, live with their husbands?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I think there is a large percentage. I do not know what the exact percentage is, but of course, there is a large percentage of people who live with their husbands. So that, I submit that, according to all principles of legislation, the affection must be the prime motive for legislation so far as inheritance is concerned. My friend Mr. Velu Pillai said something with respect to the protection of women. He told us that the karanavan was the natural protector of our women who were living in the tarwad and that their acquisitions must go to our women and so forth. Of course, there might have been a time when the marumakkathayam system was in its pristine glory, as Mr. Velu Pillai said. But, in my opinion, Sir, it has long since ceased to be so. On the other hand—

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): How many years ago?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Several years.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Is he in a position to give some figure?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Any figure you want.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Will it be twenty-five?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It will be fifty years. It has long since ceased to be so.

The next complaint is that the karanavan does not look after the interests of any but his own wife and children. It is in the interests of the women, therefore, that I say that there should be individual partition and makkathayam, because the karanavan cares more for

[Mr. K. Paramesvaran Pillai.]

his wife and children than for his sister or any other woman in the family. Naturally enough, therefore, women want more protection in the present state of the tarwads. Therefore I say that we should have individual partition and a law for complete devolution of property in favour of one's wife and children primarily for the protection of our women and children.

I may also submit, Sir, the Council knows that, when the Ezhava Bill provided for a complete system of inheritance in the makkathayam line, there was a very serious protest from certain conservative members of the community who wanted to preserve what is known as misradayam. Then some people tried their level best by means of petitions to the Government, by means of petitions to the Council and to individual members, to have the Bill amended so as to retain the old system of misradayam. Evidently, there is a small number of people at least—I do not know whether it is the minority or majority—in the Ezhava community who would like to retain the existing system and not make any change. On the other hand, we find that, although there have been several meetings, several representations and several memorials in regard to this Nayar Regulation, there has not been a single protest from any person or body or society against this portion of the Bill or for maintaining the existing system. Therefore, it appears to me that the Nayar community is now even more anxious that a change should be effected in its system of inheritance than the Ezhava community. Whatever may be the position of Ezhavas in this matter, that the Nayar community is quite prepared to accept this piece of legislation, I have absolutely no doubt. I may also assure the House that after this Bill was introduced into this Council I myself had occasion to meet several conservative members of the community in various parts of Travancore and I had also occasion to discuss with them the several provisions of this measure. There was, in some cases, very severe protest against the law of individual partition. But I heard absolutely no opinion against the makkathayam system of inheritance that was sought to be introduced into the Nayar community by means of this legislation. Not a single individual spoke against that, although, as I have already said, there was some difference of opinion in regard to partition—as to how partition should be effected and to what extent. Though in one sense it is not a revolution, in another sense it is a revolution inasmuch as the change is radical. I do not agree with Mr. Velu Pillai in thinking that it is revolutionary inasmuch as it is sudden, but, on the other hand, I may agree with him in thinking that it is radical.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I was quoting the report of the Marumakkathayam Committee.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I may say it is radical. Therefore, probably, that was what induced Mr. Velu Pillai in

bringing up this amendment, so that this radical piece of legislation may not be passed by the Council at least without a protest. I believe that is the only object with which Mr. Velu Pillai has brought forward this amendment.

MR. A. HOOGEWERF (*Nominated*): I rise to oppose the amendment, especially after the very lucid way in which the mover of the Bill has explained the matter. I have just to make one or two remarks by the way. We accepted monogamy because the educated classes, the *intelligentsia* of the country, follow monogamy. Their leaders are also following monogamy and so the rest of the people have to follow the lead. In fact during the discussion yesterday, it was shown that most of the people are monogamous. Then, with regard to makkathayam, the same analogy will hold good. Most of the people are makkathayees. Because it has been long delayed, that is no reason why it should be allowed to continue. I say that is the very reason, as Mr. Paramesvaran Pillai was putting it, for introducing it as soon as possible. The country is ready for it. In fact it is long due. It is not a leap in the dark—I heard the expression from Mr. Velu Pillai or Mr. Paramesvaran Pillai.

PRESIDENT: Mr. Velu Pillai used the expression “radical change” or something like that.

MR. A. HOOGEWERF (*Nominated*): I do not think so. A change has to be brought about somehow or other. Mr. T. K. Velu Pillai said that he was in favour of the niece, brother and sister alike to be included. That is because the marumakkathayam law prevails at present. That is begging the question. As soon as the makkathayam law is introduced they will run up to their mother and other protectors. There will be no disruption whatever of family life. The Ezhavas have accepted makkathayam and I do not see why the Nayar community, which I think is far ahead of the Ezhava community, should not accept it. It is quite the natural order of things that the wife, husband, and children must live together. That is the family life. This system of marumakkathayam is unique in Travancore. It is a very great pity that it exists here.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I may tell Mr. Hoogewerf that the system exists in Travancore, Cochin Malabar and South Canara.

MR. A. HOOGEWERF (*Nominated*): All to their shame. (*Laughter.*)

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I think, Sir, that as a member of the community I have got the right to resent that. I want Mr. Hoogewerf to withdraw the statement. Does he think that the Nayar community is to be ashamed because it follows marumakkathayam? I wish Mr. Hoogewerf would withdraw the statement.

MR. A. HOOGEWERF (*Nominated*): There is absolutely no reflection upon the community. It only refers to the particular system of inheritance, marital relations, etc., prevailing in the community.

[Mr. T. K. Velu Pillai.]

PRESIDENT: That is according to your view, Mr. Hoogewerf?

MR. A. HOOGEWERF (*Nominated*): Yes, Sir. If you want me to withdraw I shall very gladly do it. I have very great respect for the community, and Mr. Velu Pillai and other Nayars are all my brothers. (*Laughter.*) The wife lives in her tarwad house because there is the tarwad system existing and she has to look to her tarwad people for help on account of the present system. She will be rushing to her husband as soon as makkathayam law is passed. The present system is very unnatural and for these reasons we must introduce makkathayam as early as possible.

MR. T. K. VELU PILLAI (*Tirvandrum cum Nedumangad*): Sir, my position has been misunderstood to a very great extent. I do not in the least object to fathers leaving their whole property to their children if they are so inclined. I do not propose to take away the full testamentary authority or any other power of disposition *inter vivos*. My argument is that there is a debt payable by members of the marumakkathayam tarwad, and this debt had been contracted for their education or for some other means of enabling them to make self-acquisitions. That should be considered in the nature of a trust, and a trust must have precedence over everything else. If an intestate has debts they are charged first upon his self-acquired and separate property. If the State proposes to levy succession duty that will have the precedence. If, for public purposes, for fiscal and other reasons, some portion of the money left by an intestate can be appropriated, that analogy should be legitimately extended to the repayment of sums advanced by people in the full expectation that the man who got the benefit of the money would pay it back by contributing something to the well-being of the family. I submit that is an attitude which should not be penalised. I do not say that we should prohibit makkathayam for ever. Mr. Paramesvaran Pillai said that my position was unique. I may say, Sir, that there are several others of my way of thinking. Mr. Paramesvaran Pillai pointed out that there were people in different parts of the country who had acquiesced in the present Bill as revised by the Select Committee. That may be partly true. But I know several people who think that rights over the intestate's property should not be given at this stage solely to his wife and children. Talking particularly of my constituency, I have had occasion to speak to various persons, very respectable and rich men, touching this important matter. They maintain that the half-and-half rule should be enough for the present. The means available to both of us, to Mr. Paramesvaran Pillai and myself, of finding out the direction of public opinion in this matter is more or less the same. I have had the occasion to speak to gentlemen in other parts of the State also. Mr. Paramesvaran Pillai was quoting Kunjan Nambiar. I admire and respect Kunjan Nambiar; but Kunjan Nambiar always had a fling at the Nayars as will be testified to by Mr. P. K. Narayana Pillai who sits in front of me. So, if my friend Mr. Paramesvaran Pillai bases his conclusion regarding the Nayar community on the evidence furnished by Kunjan Nambiar, he will be landed in dangerous shoals. Mr. Halloway's judgment has

been quoted. I have also gone through some of the judgments of that remarkable Judge. He says, no doubt, that the interference of the court was not proper. But it was more with reference to the mismanagement of tarwads and the necessity of partition that Mr. Halloway considered the whole question of marumakkathayam, and not with regard to the question of giving the whole of the self-acquired property of a Nayar male to his wife and children. I believe Mr. Paramesvaran Pillai will bear that distinction in mind. If he will be so good as to place before the Council any *dicta*, whether *obiter* or proper, from the judgments of Mr. Halloway where he has said that, among the Nayars, the whole of the self-acquired property ought to go to the wife and children, I shall certainly thank him. And one may have his own views in spite of what the eminent judge said years ago.

The analogy of the Ezhavas having a law as proposed in the Bill has been dwelt upon by me at the very beginning. Considering the circumstance that they were following a mixed system of inheritance, they might be justified in their desire for makkathayam. But a period of ten or fifteen years is not adequate to change the Nayar system of inheritance from marumakkathayam to makkathayam.

MR. N. KUMARAN (*Nominated*): Is Mr. T. K. Velu Pillai aware that two-thirds of the Ezhava community follow marumakkathayam and only one-third follow the mixed system?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am aware of that. If one did not learn that even after the discussion of the Ezhava Bill, it would be unpardonable.

Mr. Paramesvaran Pillai said that the whole scheme of the Bill would be changed if the amendment was to be adopted. I do not think it is a fact, because, if the Section regarding individual partition is accepted, as he hopes it would be, there will be no difficulty. It is only so long as the status of non-division is maintained that Section 12 as proposed by me would operate. So, if individual partition comes, the Gordian knot will be cut and these questions will not arise. Even if a man is not prepared to ask for partition, if he happens to possess any considerable self-acquisition, he can will it away. Sir, I might mention one circumstance. My friend Mr. Kumara Pillai, whose experience of the Nayar community is not second to that of any one here, told me some days back that there was a paddy field belonging to his tarwad which was outstanding on mortgage, and although God had given him enough money he would not propose to redeem it for a sacred reason. That reason was that it was by that mortgage amount that Mr. Thanu Pillai, our revered countryman of happy memory, who did so much to reform the marumakkathayam law—it was with that money also that Mr. Thanu Pillai was educated. I am referring to this to satisfy the House that there are people who even now derive benefits from the education which they have been able to acquire at the cost of the family.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know from Mr. Velu Pillai the percentage of persons educated at the expense of the tarwad?

[Mr. K. Paramesvaran Pillai.]

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I know from Mr. Narayana Pillai the percentage of people who have not received the assistance of the tarwad? If he can give that information I shall certainly give him the information he requires. (*Laughter.*)

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am thankful for the illuminating answer. (*Laughter.*)

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): For a very illuminating question there is a perfectly illuminating answer. I know that most of my Nayar friends who were my class-mates at college were maintained at the college by their tarwads. There were others who came here without any help from the tarwad and worked their way up. Such people may not be able to realise the situation, because they do not owe much to the tarwad. So far as this House is concerned, I do not attach —

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether Mr. Velu Pillai was educated at the expense of the tarwad?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Mostly at the expense of my dear father and partly from my tarwad. But my father intended that my sisters and brothers should have a claim to what I might earn. I am only saying that the laws of inheritance should not be changed so suddenly and so radically. And there is nothing inequitable in preserving the existing law because there is complete testamentary power which may be availed of by the father in favour of his children, if he so desires.

Sir, there is a difficulty under which I am labouring, and it is the importance of circumstances. I do not attribute any motive to anybody; far be it from me to do so. It may be that some of my friends in this Council, belonging to the Nayar community, cannot really appreciate the feelings that subsist between brothers and sisters, because there is a rather large proportion of my friends here who have no sisters. Those who are able to realise the actual condition of things will, I trust, not vote against my motion. After all, life is life and affection is affection whether it proceeds from the wife and children or from the mother or sister, and obligations are also the same.

MR. A. HOOGEWERF (*Nominated*): Am I to understand from Mr. Velu Pillai that, if the system is changed, boys and girls will not be educated?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I do not say that. I am only talking of the past history and the existing conditions.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I know from Mr. Velu Pillai whether the members following the Mitakshara Law have no affection for brothers and sisters?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Certainly they have. They have been living in that system for a long time without being influenced or operated upon by the new-fangled notions of reform. I have seen some members of the Nayar community who are able to realise that feeling, the feeling of gratitude for the benefits they have received from the tarwad. My friend Mr. Kumara Pillai will testify to that. I once heard some enlightened gentlemen saying that the mother and sister should have nothing to meddle with the property of a man. It is because of such persons that I have spoken at some length. I would only request them to consider whether sisters, nieces and aunts are not entitled to put their case strongly before this House, particularly because the system was in existence for a very long time and has been respected by the best men of the community.

If a Regulation is proposed to be passed to modify the laws of the Christian community or the Brahmin community to the effect that the daughters should have equal shares with the sons I do not think that the House will pass any such measure. The principle of distributing one's assets equally between his children, male and female, will be most equitable. Still they would oppose such a measure. Changes in the law should be always slow. The Englishman probably realises that primogeniture is not quite good, and although there is a very enlightened democracy in England they do not legislate for the abolition of primogeniture. Even in unimportant matters legislative changes are always tardy and difficult. Even a modification of the calendar, legislatures have found very difficult to effect. A friend was telling me the other day about a very insignificant thing that the English people are not able to change, *viz.*, the rule of the road. It appears that throughout the continent the rule of the road is to "turn to the right". In England alone, even now the rule is to "turn to the left." At the time of the French Revolution the whole of the continent adopted the new method of measuring distance. But the Englishman still persists in using the yard and the foot. Therefore, even in trivial matters a change is very difficult. Much more difficult are the changes affecting long-established customs which are not only not immoral but beneficial to the community. I would only remind my friends that the proposal to change the law of inheritance is a very serious matter and that they should put themselves in the position of those who have sisters and other maternal relatives, when they vote upon the question.

PRESIDENT: MR. T. K. Velu Pillai's amendment runs as follows:—

Substitute the following for Clause 12:—

"On the death of a Nayar male, leaving surviving a widow or children, or both, she or they shall, if he has undivided marumakkathayam heirs, be entitled to half a share of his self-acquired or separate property left undisposed of at his death, and if there are no such heirs, such widow or children or both shall be entitled to the whole of such property."

The amendment was then put to the vote of the House and lost, 12 voting *for* and 19 *against*.

[MR. T. K. Velu Pillai.]

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*):
I demand a poll.

A poll was taken and the House divided as follows:—

AYES—13.

- | | |
|---|-------------------------------|
| 1. Mr. S. T. Ponnuswami Pillai. | 7. Mr. T. K. Velu Pillai. |
| 2. Rao Bahadur K. V. Rangaswami Aiyangar. | 8. „ M. N. Pillai. |
| 3. Mr. R. K. Krishna Pillai. | 9. „ T. Kumara Pillai. |
| 4. „ P. Paramesvaran. | 10. „ G. Paramesvaran Pillai. |
| 5. „ M. Udaya Varma Raja. | 11. „ N. Padmanabha Pillai. |
| 6. „ Trivikramar Vasudevar. | 12. „ T. Lakshmana Pillai. |
| | 13. „ M. K. Khadir Pillai. |

NOES—21.

- | | |
|---|--|
| 1. Mr. K. Paramesvaran Pillai.
(<i>Ag. Director of Agriculture</i> .) | 13. Mr. N. Ramakrishna Pillai. |
| 2. „ K. George. | 14. „ K. Paramesvaran Pillai.
(<i>Tiruvalla</i> .) |
| 3. „ R. Krishna Pillai. | 15. „ V. Kunjukrishna Pillai. |
| 4. „ S. Paramesvara Aiyar. | 16. The Rev. Fr. Kuriakose
Vettikkapalli. |
| 5. „ M. R. Madhava Variar. | 17. Mr. C. P. Kochukunju Pillai. |
| 6. „ P. K. Narayana Pillai. | 18. „ A. Hoogewerf. |
| 7. „ J. John Nidiry. | 19. „ A. Govinda Menon. |
| 8. „ N. Kumaran. | 20. „ Paul V. Daniel. |
| 9. „ P. T. Thomas. | 21. „ T.M. Chidambaratanu
Pillai. |
| 10. „ Dominic Tomman. | |
| 11. „ Joseph Panjikaran. | |
| 12. „ C. Sankara Menon. | |

The amendment was declared lost.

The following amendments were not moved:—

MR. M. N. PILLAI (*Trivandrum*):

Line 2. Add “or father ” after “ mother. ”

Line 2. Substitute “ or any two or all ” for “ or both. ”

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamtilta*):

Line 2. Add after “ widow, ” the words “ or father, ” and after “ mother ” substitute “ or all ” for “ or both. ”

MR. M. N. PILLAI (*Trivandrum*):

Line 5. Insert the word “ father ” between the words “ mother ” and “ and widow. ”

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamtilta*):

Lines 5 and 6. Add “ father ” after the words “ absence of the. ”

MR. M. N. PILLAI (*Trivandrum*):

Line 6. Insert the word “ father ” between the words “ mother ” and “ widow. ”

The question that Clause 12 form part of the Bill was put to the vote of the House and carried.

The Clause was added to the Bill.

Clause 13.

The following amendments were not moved :—

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamtilta*):

Sub-clause (i). Line 1. Add "the father" after "more than one."

MR. C. SANKARA MENON (*Quilon*):

Sub-clause (1). Line 1. Delete "or widows if there are more than one."

MR. M. N. PILLAI (*Trivandrum*):

Sub-clause (i). Line 1. Insert the words "the father" between the words "one" and "and the mother."

MR. M. N. PILLAI (*Trivandrum*):

Sub-clause (i). Line 2. Substitute "one-ninth of the estate" for "a share."

Line 2. Substitute "but such share shall never exceed the share" for "equal to that."

MR. A. GOVINDA MENON (*Alangad cum Parur*):

Sub-clause (i). Add the following proviso to the sub-clause:

"Provided that the mother shall have only a life estate in her share."

MR. C. SANKARA MENON (*Quilon*): Clause 13, sub-section (iii) runs as follows:

"Grand-children shall take in equal shares what their father would have taken had he survived the intestate."

That is what the Section now says. I propose that, in line 1 of sub-clause (iii) of Clause 13, the words "or mother" be added after the word "father" and that in line 2 the words "or she" be added after the word "he." Sub-section (ii) refers to sons and daughters. So, the grandchildren might be either through the sons or the daughters. All the grandchildren must take in equal shares. Therefore, I propose that the words "or mother" be added after the word "father," in line 1 of sub-clause (iii) and the words "or she" after the words "he" in line 2.

MR. N. KUMARAN (*Nominated*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I shall make a few observations in respect of the amendments. Undoubtedly that is what is intended. I think that it is only by way of illustration that the Section has been provided. According to the general rules of interpretation 'male' includes 'female' also. Therefore, I think "father" would include "mother" also. Copious illustrations have been given to make it as clear as possible.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I know the authority of Mr. Paramesvaran Pillai in saying that "father" includes "mother" also?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is not exactly what I meant. There are authorities to show that, generally, male includes female also. Therefore, it may also be understood that father includes mother also.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If we substitute the word "parents" for the word "father," I think that would be sufficient for the purpose.

[Mr. P. K. Narayana Pillai.]

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I think there is no harm in accepting the amendment of Mr. Sankara Menon.

The amendment was then put to the vote and carried.

The following amendment was not moved:—

MR. N. KUMARAN (*Nominated*):

Sub-clause (iii) Line 1. Insert the words "or mother" between "father" and "would."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My amendment is only a verbal amendment. I want to substitute the expression "grade" for "degree" in line 4 of sub-clause (iii). Personally, I would myself prefer the expression "grade". I leave it to the mover to accept the amendment or not. If he does not want the amendment I do not want it myself.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In all Succession Acts, in Hindu Law and in the Indian Succession Act, the expression "degree" is used. I took it from the Indian Succession Act.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I withdraw the amendment.

The amendment was, by leave, withdrawn.

The following amendments were not moved:—

MR. M. N. PILLAI (*Trivandrum*):

Sub-clause (iii). Add "the nearer excluding the more remote" at the end.

MR. C. SANKARA MENON (*Quilon*):

Illustration (a). Line 1. Delete "and B two widows" and substitute "widow."

Illustration (a). Line 2. Delete "B" and substitute "one-fifth" for "one-sixth."

MR. M. N. PILLAI (*Trivandrum*):

Illustration (b). Line 2. Insert the words "of a predeceased grand-child" between the words "great-grand child" and "by a deceased son D."

The question that Clause 13 as amended form part of the Bill was then put to the vote of the House and carried.

The Clause as amended was added to the Bill.

Clause 14.

The following amendments were not moved:—

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamittita*):

Line 2. Add "the father" after "his widow" and omit "or widows."

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamittita*):

Line 3. Omit the words after "mother," and lines 4 and 5; and substitute the following:

"One-half of the self-acquired and separate property left undisposed of by him at his death shall equally devolve on his mother and father and the other half on his widow."

MR. C. SANKARA MENON (*Quilon*):

Line 2. Delete the word "or widows."

MR. A. GOVINDA MENON (*Alangad cum Parur*):

Line 3. Delete the word "one-half" and substitute the words "the whole."

MR. M. N. PILLAI (*Trivandrum*):

Line 3. Insert the words "or father or both" between the words "mother" and "one-half of."

Line 3. Delete the words "one-half of."

MR. A. GOVINDA MENON (*Alangad cum Parur*):

Line 4. Between the words "shall devolve", and "on his mother," insert the words "in equal shares."

Lines 4 and 5. Delete the words "the other half."

MR. M. N. PILLAI (*Trivandrum*):

Lines 4 and 5. Substitute the words "them equally" for the words "his mother and the other half on his widow or widows."

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamittita*):

Line 6. Add "and father" after "the mother," and "equally" after the words "the whole."

MR. M. N. PILLAI (*Trivandrum*):

Line 6. Substitute the words "that share shall devolve on the thavazhee of the mother" for the words "the mother shall take the whole."

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*):

Lines 4 and 6. Substitute "mother's thavazhee" for "mother."

The question that Clause 14 form part of the Bill was then put to the vote and carried.

The Clause was added to the Bill.

Clause 15.

The following amendments were not moved:—

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamittita*):

Line 2. Add "nor father" after "mother."

MR. M. N. PILLAI (*Trivandrum*):

Line 2. Substitute "parents" for "mother."

MR. A. GOVINDA MENON (*Alangad cum Parur*):

Lines 2, 3, 5, 6 and 7. Delete the words "mother's thavazhee" and substitute the word "father."

MR. M. N. PILLAI (*Trivandrum*):

Line 6. Insert the words "that one-half shall devolve on the grandmothers's thavazhee and in the absence of the grandmother's thavazhee" between the words "mother's thavazhee" and "the widow."

The question that Clause 15 form part of the Bill was then put to the vote and carried.

The Clause was added to the Bill.

Clause 16.

The following amendments were not moved:—

MR. M. N. PILLAI (*Trivandrum*):

Lines 1 and 2. Delete the words "none of the heirs mentioned in Sections 12, 14 and 15, but."

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamittita*):

Line 2. Omit the words "his father and."

Line 3. Delete the words "one-half of the" and substitute the word "his."

[Mr. K. Paramesvaran Pillai.]

MR. M. N. PILLAI (*Trivandrum*):

Lines 3, 5 and 6. Substitute the words "mother's thavazhee" for "grandmother's thavazhee."

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamtitta*):

Lines 4 and 5. Delete the words "on his father and the other half."

Lines 6 and 7. Delete.

MR. M. N. PILLAI (*Trivandrum*):

Line 6. Insert "that share shall devolve on the grandmother's thavazhee and in the absence of the grandmother's thavazhee" between the words "thavazhee" and "the father."

MR. A. GOVINDA MENON (*Alangad cum Parur*):

Delete the portion of the Clause after the words "in Sections 12, 14 and 15" and substitute the words "the mother's thavazhee shall take the whole and, in the absence of the mother's thavazhee, the grand-mother shall take the whole."

Line 6. Delete the words "grandmother's thavazhee, the father" and substitute the words "grandmother, her thavazhee."

Line 7. Delete the words "the father, the grandmother's thavazhee," and substitute the words "the thavazhee of his great-grand-mother or the thavazhee of his more remote female ascendants."

MR. M. N. PILLAI (*Trivandrum*):

Line 7. Insert the words "the mother's thavazhee and in their absence" between the words "the father" and "the grand-mother's."

MR. A. GOVINDA MENON (*Alangad cum Parur*):

Add at the end of the Clause the words "the nearer always excluding the more remote."

The question that Clause 16 form part of the Bill was then put to the vote and carried.

The Clause was added to the Bill.

Clause 17.

The following amendment was not moved:—

MR. A. GOVINDA MENON (*Alangad cum Parur*):

Delete the Clause.

MR. P. K. NARAYANA PELLAI (*Ambalapuzha*): My amendment is only a verbal alteration. The Section runs as follows:—

"On the death of a Nayar male leaving him surviving none of the heirs mentioned in sections 12, 14, 15 and 16; the self-acquired and separate property left undisposed of by him at his death shall devolve on the thavazhee of his great-grandmother or on the thavazbee of his more remote female ascendants, the nearer excluding the more remote."

The provision can apply only to the latter portion since the more remote are being excluded by the nearer. It is only in the absence of the grandmother's thavazhee that the inheritance can go to the great-grandmother's thavazhee. I therefore move that the words "and in its absence" be substituted for the word "or" in line 4.

MR. M. N. PILLAI (*Trivandrum*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I do not think it is necessary, Sir, because it is both illustrative as well as exclusive. The Section as it stands runs as follows:—

"On the thavazhee of his great-grand-mother or on the thavazhee of his more remote female ascendants, the nearer excluding the more remote."

This is quite clear in itself. I do not mean to say that the amendment is not acceptable. But I only say that it is unnecessary since it is quite clear.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If my friend says that, as it is, the sense is quite clear, I am prepared to accept it. I therefore withdraw the amendment.

The amendment was by leave withdrawn.

The question that Clause 17 form part of the Bill was then put to the vote and carried.

The Clause was added to the Bill.

Clause 18.

The question that Clause 18 form part of the Bill was then put to the vote of the House and carried.

The Clause was added to the Bill.

Clause 19.

MR. N. KUMARAN (*Nominated*): I move that the following be substituted in place of Section 19.

"On the death of a Nayar female leaving no female descendants surviving her but only her husband and her mother's thavazhee, one-half of the self-acquired and separate property left undisposed of by her at her death shall devolve on her husband and the other half on her mother's thavazhee. In the absence of mother's thavazhee, the husband shall take the whole, and, in the absence of the husband, the mother's thavazhee shall take the whole."

We see that Section 18 deals with the question of inheritance in case there is only the issue of a Nayar female surviving her, and Section 19 deals with the case where a Nayar female dies leaving surviving her no issue but only her mother's thavazhee, and Section 20 deals with the case in which she leaves behind only her husband and her grandmother's thavazhee and not any of the heirs mentioned in Clauses 18 and 19. Section 21 deals with the case in which she leaves behind only remote heirs such as the thavazhee of her great-grandmother. My object in moving this amendment is to bring in the husband who has now been postponed to the grandmother's thavazhee. I think that is rather unjust. There is no reason why the husband should be postponed to the grandmother's thavazhee. It would only be just to bring him along with the mother's thavazhee and take after the issue of the female. I have, therefore, introduced a change in Clause 19 by which the Nayar husband takes along with the mother's thavazhee. Consequently a change is necessary in Clauses 20 and 21. All these changes also I have proposed in my later amendments. What I therefore submit is that in order to avoid this injustice, the husband may be brought in and made an heir along with the mother's thavazhee.

MR. V. KUNJUKRISHNA PILLAI (*Chirajinkil*): I second it.

MR. A. GOVINDA MENON (*Alangad cum Parur*): The amendment is: "on the death of a Nayar female leaving no female descendants." 'Female' is the word used.

[Mr. G. Paramesvaran Pillai.]

MR. N. KUMARAN (*Nominated*): That is a mistake.

PRESIDENT: It is "lineal descendents." That is what is in the Bill as submitted by the Select Committee.

MR. N. KUMARAN (*Nominated*): It is "lineal descendents." It is a mistake for "lineal descendants."

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I oppose the amendment. So long as a man or woman has not got lineal descendants, it is purely a matter of policy as to who else should have the property. We have made a particular scheme. Mr. Kumaran now says that the "husband" should be advanced from Section 20 to Section 19. Absolutely no reasons have been given as to why it should be done. We have made the husband also an heir in the absence of brothers and sisters. Of course, it is a lurking sense of the marumakkathayam system still in our minds that has induced us to provide that, in the absence of lineal descendants, the brothers and sisters should inherit the property of an intestate female. Unless there is something very radically wrong about it, I do not see why this amendment should be accepted. So I object to this amendment.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I beg to support the amendment proposed by Mr. Kumaran. The separate property of a female may consist mainly of properties given as a gift by the husband to the wife. That in such cases, when the wife dies leaving no lineal descendants, the entire property should go to her mother's thavazhee, and that the husband should not have any share whatever in it, seems to me to be quite unfair, especially in view of the other provision, viz., that in case the husband dies leaving only one widow and children, the whole property should go to the wife and children as well as the mother. That is the provision in regard to the intestate succession of a Nayar male. In that case, seeing the relationship between them and also the nature of the acquisition that the wife will obtain from the husband—and that is the natural source of her income—it will be hard to say that after the wife's death the entire property which stood in the name of the wife should pass on to the mother's thavazhee only.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know from Mr. G. Paramesvaran Pillai how the system of inheritance stands under the Hindu Law with due deference to their form of marriage?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): It is absolutely irrelevant and misleading.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I only wish to know it.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): My own view is that the question is absolutely irrelevant, and I do not propose to answer it in this connection. So far as we are concerned, it is quite a simple matter. The wife dies leaving separate property, the bulk of

which will be ordinarily contributed by the husband. The decisions of our courts are to the effect that the property standing in the name of a woman should be presumed to have been given by the husband.

MR. C. SANKARA MENON (*Quilon*): May I know whether he is not aware that the wife is also able to get a share from the tarwad?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I would remind Mr. Sankara Menon that, if the wife gets her share, it is also a separate property to which the wife is entitled.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is not there a possibility of the wife getting something from her parents?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes, there is a possibility. I said "*the bulk* of the property". I never said anything else. You cannot legislate for every conceivable thing. Let us see in this particular case what is just and proper on the whole. What I said was not that the mother's thavazhee should not be given anything at all. The grandmother's thavazhee will get one-half, and the husband another half. Clause 20 says:

"In the absence of the grandmother's thavazhee the husband shall take the whole; and in the absence of the husband the grandmother's thavazhee shall take the whole".

I want that stage to be a little further advanced, *viz.*, the stage at which the mother's thavazhee, the brother and sister should get one-half and the husband should get the other half. There is absolutely no injustice about it, because the wife's near relations do not suffer; and it is only fair that the husband should get the other half. Of course, in the absence of the husband, the mother's thavazhee should take the whole. That is also provided for in Mr. Kumaran's amendment. Therefore it is only fair and just that it should be adopted.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am also in favour of the amendment. We have made marriage practically permanent; we have made divorce practically impossible. And so far as inheritance is concerned, it is but fair, seeing that the principle of complete makkathayam has been accepted by the House, that the husband should have a greater claim to the property of his intestate wife. That will be one further advanced step towards complete makkathayam. For that reason I support Mr. Kumaran's amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am sorry I have to oppose this motion. Sir, a little while ago, we were listening with rapt attention to a very long discourse upon the necessity of adhering to the system of inheritance now in prevalence.

Mr. T. K. Velu Pillai and 13 members of this House with him were in favour of that view, *viz.*, to maintain intact the present system. That evidently reflects the sense of the community to some extent. Such being the case, I would have practically excluded the husband out of consideration. But it was in a sense of fairness, in recognition of the status of the husband as one entitled to inherit, that we introduced him along with the grandmother. Absolutely no representation otherwise from the public at large was received on that subject and it is Mr. Kumaran who has sent up this particular amendment.

[Mr. C. P. Kochukunju Pillai.]

So far as the sense of the community goes, there is nothing to indicate that there is any necessity for a change of what has been provided by the Select Committee in this respect. In regard to the idea of fairness entertained by my friend Mr. G. Paramesvaran Pillai, there seems to be necessity for reciprocity in everything. Yet in various provisions of this Bill, there is an absence of reciprocity as has been conceded by him on a prior occasion. Here is a party who is not entitled to any inheritance under the existing law. We have introduced him at a particular stage, and if the sense of the community is not in favour of that view, at the next stage of amendment we can change it, and legislate according to the changed view. Further, the subsequent provisions that we have made in the Bill basing such provisions on the sequence of this particular provision now under discussion, would all get dislocated, and the effect of it would be—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is no dislocation.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There would be difficulty and the subsequent provisions will have to be arranged accordingly. These are the grounds which appeal to me at the present stage. Even under the Hindu law the system of inheritance from a woman is regulated according to the form of marriage. It is only when the girl happens to be married in the *Brāhma* form that the husband inherits; otherwise the father inherits. That is the provision of the Hindu law which makes inheritance subject to the form of the marriage. There is no doubt a presumption that, in the case of married females, when nothing is known of their source, her properties may be treated as properties given to her by her husband. But what I submit is that, as a matter of fact, properties might come to a Nayar female from various sources—firstly, from her tarwad, secondly, from her parents, thirdly, from her children, and lastly—I do not want to disguise the fact—from her husband also. In these days when some of them happen to be graduates employed by the Government, they may themselves have made self-acquisitions also. There is no use of disguising that fact. When, therefore, there is no uniform basis to proceed upon, simply upon the conjecture and presumption raised by the High Court, to enact a uniform law that every acquisition of a woman must necessarily go to the husband, I beg to submit, is legislating without paying regard to the underlying facts.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): I rise to support the amendment and, in doing so, I would only cite one instance. There is a man in my place who is a person having his fifth wife, because all the first four wives died. The first wife died leaving some issue who are now enjoying the property allotted to them by the husband. He married a second wife in whose name also some properties were acquired. She died issueless. Those properties are now in the hands of persons who are not even direct heirs to her. A third

time also he married another for whom he acquired some property. Besides some paddy lands, he put up a building in a compound purchased for her and that also in her name. She died issueless.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether it is a prevalent practice or a solitary instance? Is Mr. C. P. Kochukunju Pillai in a position to cite another instance of such magnitude?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): I can quote more than one instance. The third wife lived with her husband and she died without leaving any issue. On the 16th day after her death, this man wanted to continue living there. But her two brothers stepped in and asked him to quit the house. He had no other alternative than to quit the house immediately. There was a slight dispute in regard to the movables also, for which he appealed to some of his friends, including myself. We interfered in the matter and some of the moveables were allowed to be taken away by him, while others were given back to those brothers, who subsequently alienated the properties given by this man, and went away to different places.

Then, a fourth time he married another woman. (*Laughter*.) He was a wealthy man and he had enough properties in his name. To the fourth wife he gave some properties and built a building. Then also he did not take any precaution, but had all these in her name. She also died issueless (*laughter*), so much so that he had to forfeit those properties as well.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I point out that he deserves that? (*Laughter*.)

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): He is now having a fifth wife (*loud laughter*), for whom also he has purchased a compound. Now, I understand that in the fifth case he took care to make a provision in the document to the effect that, after her death, the property should come to him. His case is really hard. About 100 paras of paddy lands and a few compounds and buildings given by this man to his former wives are now being enjoyed by utter strangers, some of whom are not heirs to his wife even. So, I think it is only fair to make such a provision in a legislation of this kind, and hence I fully support the amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, as a member of the Select Committee, I think I may say a word. I very much sympathise with the old man whose case was depicted by Mr. Kochukunju Pillai. I do not think such cases will occur often. So far as the amendment is concerned, I think it is objectionable. Strictly speaking, in all these matters we ought not to be very much guided by analogy or reciprocity or other circumstances. The provision is that if a Nair male dies leaving him surviving his wife and children, the wife gets his property, but if a Nayar female leaves behind her husband and children, he does not get her property, so that the reciprocity stops there. The only question then is where we should put in the word

[Mr. T. K. Velu Pillai.]

husband. In other words, it is not possible to expect the same amount of logical sequence in the matter of the female as in the case of the male. It is absolutely necessary, seeing that a woman is entitled to the husband's property, that the husband must be recognised to be the heir to her property which under the law he is not. Therefore, in the Select Committee, we found considerable difficulty to give him an exact place in the line of succession, and my friends Mr. T. K. Velu Pillai and G. Paramesvaran Pillai were very vehement. At any rate Mr. T. K. Velu Pillai was very vehement—he would perhaps object to the word “vehement”.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): No, not when it is true.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The other day he objected to it.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May also say that I expressly stated “now that the House has accepted complete makkathayam”?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Even then it does not in any way weaken my arguments and the inference to be drawn from his words. The difficulty was where exactly to place the husband. Mr. T. K. Velu Pillai, as Mr. P. K. Narayana Pillai put it, was in a position to get thirteen votes for his motion; that shows that the Nayar community does not want that the sisters and the nephews should be disinherited under all circumstances. The object of the Bill is to make it imperative that the husband or the father should be bound to maintain his wife or children, as the case may be. And when there are no lineal descendants, the Select Committee thought it preferable to give the whole of the property to the thavazhee of the grandmother before anybody else. Before it goes to the grandmother's thavazhee, we thought it better to give one-half to the mother's thavazhee and the other half to the husband. I do not see why Mr. T. K. Velu Pillai should object to it when the Bill proposes to give something for the mothers and something for the brothers.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I ask if Mr. Subba Aiyar is aware that, when a principle is accepted by the House, it is normally binding even upon those persons who took the opposite view?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Certainly. Just as a decree is binding upon all those who contested the case. We should stick to precedents. The only question is, where the husband should come in.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I ask Mr. Subba Aiyar whether he could give us any general idea with regard to the inclination of the wife in the matter of her inheritance, i.e.,

whether she would prefer her distant marumakkathayam relations to her husband?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That depends upon the temperament, attachment and all that. Some wives may prefer to have the husband to go along with the children. Some wives may prefer the husband to the children. That will depend upon the temperament of the husband and the wife and the extent of the time they were living together. I do not think his question is capable of a cut and dry answer. However, I do not think the putting in of the mother's thavazhee is objectionable. So, I object to the amendment.

MR. N. KUMARAN (*Nominated*): I have not much to say by way of reply. I have tabled this amendment at the instance of several of my Nair friends who unfortunately are not members of this Council, but whose opinions are nevertheless entitled to great weight.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I point out that there are similar amendments to be moved by other members also in regard to this matter?

MR. N. KUMARAN (*Nominated*): In my amendment, no serious question is involved. It consists only of the raising of the husband from the level of the grandmother's thavazhee to that of the mother's thavazhee. I therefore submit that there is absolutely no sacrifice of principle.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know why he does not make the husband inherit from the wife direct; that is to say, even when the mother is alive, why should the husband not inherit the wife's property?

MR. N. KUMARAN (*Nominated*): I thought the community might not go so far. I would therefore press the amendment.

PRESIDENT: I will put this amendment to the vote of the House. The amendment is:

Substitute the following for Clause 19:—

On the death of a Nayar female leaving no lineal descendants surviving her but only her husband and her mother's thavazhee, one-half of the self-acquired and separate property left undisposed of by her at her death, shall devolve on her husband, and the other half on her mother's thavazhee.

In the absence of mother's thavazhee, the husband shall take the whole, and, in the absence of the husband, the mother's thavazhee shall take the whole."

The amendment was put to the vote and lost, 16 voting for and 17 against.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I demand a poll.

A poll was taken with the following result :

AYES—16.

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| 1. Mr. O. S. Ramaswami Aiyar. | 9. Mr. T. Lakshmana Pillai. |
| 2. „ M. Raja Raja Varma. | 10. „ L. R. Raja Raja Varma |
| 3. Rao Bahadur K. V. | Koil Tampuran. |
| Rangaswami Aiyangar. | 11. „ C. P. Kochukunju Pillai. |
| 4. Mr. T. K. Velu Pillai. | 12. „ A. Govinda Menon. |
| 5. „ John Nidiry. | 13. „ Paul V. Daniel. |
| 6. „ M. R. Madhava Variar. | 14. „ N. Kumaran. |
| 7. „ M. N. Pillai. | 15. „ V. Kunjukrishna Pillai. |
| 8. „ G. Paramesvaran Pillai. | 16. Rev. Fr. Vettikkapalli. |

NOES—17.

- | | |
|--------------------------------|-------------------------------|
| 1. Mr. S. C. H. Robinson. | 10. Mr. T. Kumara Pillai. |
| 2. „ K. Paramesvaran Pillai | 11. „ Dominic Tomman. |
| (Ag. Director of Agriculture). | 12. „ Joseph Panjikaran. |
| 3. „ R. K. Krishna Pillai. | 13. „ C. Sankara Menon. |
| 4. „ R. Krishna Pillai. | 14. „ N. Padmanabha Pillai. |
| 5. „ S. Paramesvara Aiyar. | 15. „ N. Ramakrishna Pillai. |
| 6. „ V. Subba Aiyar. | 16. „ K. Paramesvaran Pillai. |
| 7. „ M. Udaya Varma Raja. | (Tiruvalla) |
| 8. „ Trivikramar Vasudevar. | 17. „ T. M. Chidambaratanu |
| 9. „ P. K. Narayana Pillai. | Pillai. |

The amendment was declared lost.

The Council rose at 5 P. M.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council,